



Appeal Decision

Site visit made on 1 April 2025

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 April 2025

Appeal Ref: APP/W1715/W/24/3350053

91 Leigh Road, Eastleigh, Hampshire SO50 9DQ

- 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 L & Mr D Bowers & Drever against the decision of Eastleigh Borough Council.
 - The application Ref is F/24/97449.
 - The development proposed is change of use from offices, to 8 bedroom house in multiple occupation, with associated refuse and cycle storage, boundary treatment, and provision of parking (to include dropped kerb).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An amended plan, numbered PG.9067.24.03 RevC, was submitted with the appeal, showing the omission of the proposed dropped kerb and car-parking space to the front of the property. This results in a material change to the proposal, including its description. In normal circumstances, the appeal process should not be used to evolve a scheme in this way. In this case, however, the evidence indicates that the parties had already discussed the potential for this revision at the application stage. The Council, in consultation with the Highway Authority, advised that the amendment would overcome its concerns regarding highway danger. The Council has had a further opportunity, as part of the appeal process, to consider the revised plan, and has confirmed that it would overcome reason for refusal numbered 2 on the decision notice.
3. A representation was received relating to the loss of parking as a result of the proposal. This is a matter that I will consider as part of the appeal. Therefore, in the particular circumstances of this case, and taking account of the Wheatcroft principles¹, my consideration of the amended plan would not prejudice anyone involved in the appeal.

Main Issues

4. The main issues are, therefore:
 - a) Whether the development would provide suitable living conditions for future occupants with regard to privacy, outlook, and light; and,
 - b) The impact of the development on internationally designated habitats sites.

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

Reasons

Living conditions

5. The appeal building comprises a substantial two-storey semi-detached property within the built-up area of Eastleigh. It was last used as offices, but is currently vacant, and had been vandalised shortly before my visit, with broken windows. The site, therefore, has a somewhat unkempt appearance. It is in an accessible location close to a railway station, schools, shops and other public services and facilities. It is not disputed that the re-use of the building for residential purposes would be acceptable in principle, and that the limited external alterations would not harm the character and appearance of the building and its surroundings.
6. The proposed scheme would provide eight en-suite bedrooms, a communal kitchen/utility area, and an enclosed garden area. It is not disputed that the accommodation would conform to the Council's required standards for Houses in Multiple Occupation, or that there would be sufficient space for the proposed number of residents. It is contended, however, that future occupants would not have a suitable level of privacy within the bedrooms.
7. The existing building is set approximately 1.5 metres away from its side boundary, which is marked by a brick wall that is about 1.8 metres high between the buildings. The adjacent property is similar in scale and design, and is in use as offices. It is set a similar distance from the boundary, so there is a gap of about three metres between the buildings. Both properties have ground and first floor windows in their side elevations, which look towards each other. The boundary wall between the buildings maintains privacy between ground floor windows, but the first-floor windows allow mutual overlooking by occupants at this level, and also down into ground floor windows, at close quarters.
8. The appeal building extends further back than the opposing property, so the side-facing windows in the proposed bedrooms 7 and 8, and in the communal kitchen, would not be overlooked from neighbouring windows. However, the privacy of the occupants of bedrooms 2, 3, 5, and 6 would be significantly compromised by first floor windows in the side elevation of the opposing building.
9. The relative positions of the windows means that the impacts on each of the rooms would vary. Because the neighbouring windows are at a higher level, only parts of the ground floor bedrooms would be overlooked. I saw that about 50% of Bedroom 2, and about 25% of Bedroom 3 would be affected. As the first-floor windows are at a similar level, the privacy in the whole of Bedroom 5 would be affected, whilst the offset position of the windows means about 50% of Bedroom 6 would be overlooked. Notwithstanding that the two buildings may historically have been built as houses, and that the office may only be occupied on weekdays, the proximity of the direct overlooking would result in residents not having the degree of privacy that should be expected in what would now be bedsitting rooms.
10. The rooms would all have large windows, and I saw that, despite the close presence of the neighbouring building, they were well-lit with natural light. Outlook from all of the rooms is restricted by the two-storey building directly opposite, but occupants could obtain some more open views by standing close to the windows and looking south. Overall, living conditions for occupants would be satisfactory in these regards. It is argued, however, that any measures employed to maintain

privacy would reduce light and outlook to a point where they would be below the level that should reasonably be provided in new living accommodation.

11. Despite the provision of a satisfactory standard of communal living space, residents would be likely to spend a considerable amount of time in the affected rooms, which would be their only private accommodation. The provision of obscure glazing would maintain privacy without affecting the level of light, but it would result in a total loss of outlook, resulting in claustrophobic living conditions for occupants. However, I am not persuaded that there are no other means of achieving an acceptable level of privacy, whilst also maintaining light and outlook. For example, fixed louvres at an appropriate angle could be installed on the first-floor windows, either externally or internally, to prevent overlooking. Suitably detailed, these would allow for the ingress of light from the south, and for occupants to obtain outward views.
12. Similar measures could be adopted at ground floor level. However, as in this instance the overlooking is from windows at a higher level, there is potential for an alternative solution, such as a suitably designed external canopy above the window to block the line of sight. Had I been minded to allow the appeal, such measures, or any other alternative solutions, could have been secured by the imposition of a suitable planning condition, requiring approval and installation of the mitigation prior to occupation of the affected rooms.
13. To conclude on this issue, the proposal would not provide sufficiently private living conditions for occupants without mitigation. However, if such mitigation were secured through the imposition of a planning condition, future occupants would enjoy a satisfactory level of privacy, outlook, and light. Subject to such a condition, the development would comply with Policy DM1 of the Eastleigh Borough Local Plan 2016-2036 (April 2022) (the Local Plan), which seeks, amongst other things, to ensure that new development does not have an unacceptable impact on the residential amenities of new and existing residents.

Habitats sites – New Forest

14. The development site lies within the zone of influence of the Solent and Southampton Special Protection Area (SPA) and Ramsar site and the Solent Maritime Special Area of Conservation (SAC) (collectively known as the Solent Complex), the River Itchen SAC and Site of Special Scientific Interest, and the New Forest SPA, SAC and Ramsar sites. These sites are internationally recognised and are protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). The Habitats Regulations require me, as the competent authority, to make an appropriate assessment (AA) of the implications of the proposal for the protected sites in view of their conservation objectives. They also prevent me from granting permission unless the proposal would not adversely affect the integrity of the protected sites.
15. Research shows that residents of the Borough choose to visit the New Forest area from time to time. Natural England has advised that there is a likely significant effect on the New Forest SPA, SAC, and Ramsar sites due to additional visits from the occupiers of any new residential development within the Borough. These additional visits risk contributing to the erosion of the habitats for which the New Forest protected sites are designated and to the disturbance of the species that they support.

16. The Council adopted an Interim Strategy in March 2022 (the Strategy) to address recreation impacts on the New Forest protected sites. The Strategy includes provision of Suitable Alternative Natural Greenspace (SANG) within the Borough, to divert recreational pressures away from the New Forest protected areas, and financial contributions to managing the impact of those visitors that nevertheless will still choose to visit them. Both are funded through financial contributions from new residential development in the Borough. The Strategy was updated in December 2022 and set a charge of £2,220 per dwelling to fund the required package of mitigation.
17. The proposal is for new residential development, so would involve additional residents, who would place greater recreational pressure on the protected sites. Whilst the Council's evidence does not clearly set out the level of contribution that would be required to accord with the Strategy, it is clear that some mitigation would be necessary. The evidence indicates that contributions towards SANG and visitor management are normally secured through a legal agreement. However, I have not been provided with any evidence that such an agreement has been completed, or that a financial contribution has been secured in any other way.
18. The appellant has not proposed any alternative avoidance or mitigation measures. Consequently, there is no mechanism in place to ensure that the increased recreational pressure resulting from the development would be mitigated. Following AA and adopting a precautionary approach, I am therefore unable to conclude that the development would not affect the integrity of the New Forest habitats sites.

Habitats sites – Solent Complex/River Itchen

19. The Solent region is one of the most important water environments for wildlife in the United Kingdom. Natural England has advised that elevated levels of nitrogen and phosphorus in this water environment, arising from agricultural sources or wastewater from housing and other development, are causing eutrophication. The resulting dense mats of green algae, and other effects on the marine ecology resulting from the increase in nutrients, are impacting on the protected habitats and bird species for which the River Itchen and the Solent Complex are designated. Natural England has advised that new housing development in the zone of influence has the potential to exacerbate this impact and to harm the integrity of these sites.
20. The proposed development would result in additional residents in the zone of influence, so would increase nutrient inputs into the water environment unless suitable mitigation could be provided. Natural England advises that achieving nutrient neutrality within a development is a means of ensuring that it does not contribute to cumulative harm to the habitats sites. This involves calculating the nutrient burden arising from a proposal that needs to be offset by the developer through the provision of mitigation. It is not contested that the proposal would result in additional wastewater, so that mitigation is necessary. The Appellant has submitted a nutrient calculation for the development and intends to purchase nitrate credits from a third-party provider by way of mitigation.
21. The Council operates a scheme of credits for both nitrates and phosphates. Nevertheless, whilst I do not doubt that nutrient neutrality could be achieved, I do not have up to date evidence on the availability of credits, or whether the cost of the necessary credits that would be required in this case would be viable for the

proposal. The Council is satisfied that this matter could be addressed through the imposition of a planning condition requiring the submission and implementation of a mitigation package prior to first occupation of the development. I am mindful that this approach has been adopted in another proposal nearby. However, I am the competent authority for the purposes of this appeal, and I do not have certainty, at the decision-making stage, that a planning condition would secure appropriate and timely mitigation. I am therefore unable to conclude through my AA that the proposal would not affect the integrity of the Solent Complex and River Itchen protected sites.

22. To conclude on this issue, the proposal would result in additional residential development in the zone of influence of the habitats sites, and mitigation has not been secured to prevent harm to their integrity. The proposal would, therefore, be contrary to Policy DM11 of the Local Plan, which says that development which is likely to adversely affect the integrity of an international nature conservation site will not be permitted.

Other Matters

23. The omission of the parking space at the front of the appeal site means that the proposed car parking to serve the development would be two spaces to the rear. I note that this would not meet the Council's standards. However, the site is within easy walking distance of Eastleigh Town Centre, which has a range of facilities and public transport options. Occupants of the development would not, therefore, be dependent on private vehicles. Furthermore, surrounding streets are controlled by resident parking zones. The evidence indicates that occupants of the development would not be eligible for parking permits, so there would be little likelihood of any overspill parking resulting in increased competition for parking spaces in the vicinity of the appeal site.

Planning Balance

24. The benefits of the proposal must be weighed against the harm that I have identified. Paragraph 61 of the National Planning Policy Framework (the Framework) seeks to significantly boost the supply of homes. The development would provide additional residential accommodation, which would assist with this aim. The site is in an accessible location that would be suitable, in principle, for residential development. Paragraph 73 of the Framework says great weight should be given to the benefits of using suitable sites within existing settlements for homes. The proposal would bring an empty building back into use, which would accord with the aim of paragraph 125b) of the Framework to support the development of under-utilised buildings. There would also be economic benefits associated with the conversion phase of the development, and the future spend by occupants in the local area.
25. However, the Framework makes it clear at paragraph 12 that, where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Furthermore, paragraph 193 says that if significant harm to biodiversity resulting from a development cannot be avoided, then planning permission should be refused. Overall, therefore, the benefits associated with the proposal do not outweigh the conflict that I have found with the development plan policy that seeks to avoid harm to internationally protected wildlife sites.

Conclusion

26. For the reasons given above, the appeal should be dismissed.

Nick Davies

INSPECTOR