
Appeal Decisions

Site visit made on 25 March 2025

by **B Phillips BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 April 2025

Appeal Ref: APP/C1760/W/24/3351953

2 Newtown Close, Andover, Hampshire, SP10 3AU

- 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 A Burley against the decision of Test Valley Borough Council.
 - The application Ref is 24/01362/FULLN.
 - The development proposed is the demolition of side extension and porch and alterations to fenestration and construction of new dwelling (Self build).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - whether the proposal makes adequate provision for Biodiversity Net Gain (BNG); and
 - the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings with respect to outlook.

Reasons

Biodiversity Net Gain

3. The Framework requires development to minimise impacts on and provide net gains for biodiversity. The exemptions to the BNG requirements¹ include self build and custom build development.
4. The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) states that an authority must give development permission for the carrying out of self-build and custom housebuilding on enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area in respect of each base period.
5. Section 123 of the Levelling-up and Regeneration Act 2023 (s123) sets out that a development permission counts in meeting the duty if it is actually self-build or custom housebuilding and needs to be secured as such.
6. In order to meet the requirements of Framework paragraph 57, conditions must be enforceable. There are numerous enforceability issues with the condition securing

¹ As set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024

self build as proposed by the appellant. Firstly, in relation to knowing for sure that the person building the house will live in it, meaning enforcement action is unlikely to be possible until the house is completely built and occupied.

7. Secondly, if the LPA did not consider that the occupier was a person who had primary input into the design, and took enforcement action, in order to comply, the third party would have to get the person who built the house (and presumably sold it to them) to return to live in the property. It would be impractical and unreasonable to require this. In such circumstances, it is likely that enforcement action would also be unreasonable.
8. I therefore do not consider that a condition in this instance would meet the tests of the Framework. There is therefore no appropriate mechanism before me to secure the development as a self-build/custom housebuilding. I note the previous examples where such a condition has been imposed or accepted, or even where neither a legal agreement nor condition was provided or imposed, however, whilst this is a material consideration, for the reasons set out above, I have come to a different conclusion.
9. As such, there is no exemption from the requirement to provide BNG. The objective of Schedule 7A of the Town and Country Planning Act 1990 is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits.
10. Whilst some habitat enhancements are suggested in the submitted ecology statement², such as bat and bird boxes, there is no Biodiversity Net Gain Matrix submitted, nor any assessment of the pre-development biodiversity value of the onsite habitat. As such, it is not clear whether 10% increase in biodiversity value is possible on the appeal site, particularly given its limited and constrained scale, or whether off site mitigation would be required. No mechanism is before me to secure a net gain.
11. It is therefore not demonstrated that the proposal would make adequate provision for BNG. In the absence of the provision of a biodiversity metric document which has been completed in accordance with the requirements at Schedule 7A, I cannot conclude that the development could achieve at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.
12. Consequently, and in respect of biodiversity, the development would not comply with Schedule 7A of the Town and Country Planning Act 1990.

Living conditions

13. Given the land levels, which rise from the junction of Newton Close and Plantation Road, the appeal site is located on a higher level than the dwellings along Plantation Road.
14. The rear garden area of No 11 Plantation Road is therefore significantly lower in level than the appeal site. The existing outlook from the rear of No 11 over the boundary fencing is made up of the existing side elevation of the host dwelling,

² Preliminary Roost Assessment by Daniel Ahern Ecology 14 March 2024

which extends to approximately half the width of the garden area, and open sky, visible over the single storey outbuilding. I observed that the outlook from the rear of this property at present is therefore mostly open and pleasant.

15. Whilst bringing two storey built form closer to the boundary, the proposed dwelling would be sited in line with, and would not extend to the rear at first floor level past the existing footprint of the host dwelling. Moreover, the existing single storey outbuilding which extends to the rear on the boundary will be removed, increasing the open sky visible in this direction.
16. As such, the existing open aspect element of the outlook would remain, and this would ensure that the proposal would not restrict the existing outlook and be visually dominant nor excessively prominent. It would not therefore result in undue harm to the outlook from the rear garden or from the nearest rear facing habitable room windows.
17. Whilst it would be visible on an oblique angle, no part of the built form of the proposed dwelling would sit next to the rear boundaries of Nos 12, 14 and 14a. The existing mostly open outlook from the rear gardens and windows of these properties would therefore remain mostly unaffected.
18. The development would therefore not harm the living conditions of the occupiers of neighbouring dwellings with respect to outlook. There is no conflict with the protection of living conditions and amenity goals of LP Policy LHW4.

Other Matters

19. The site is within the catchment area of the Solent and Southampton Water SPA. The special interest of the Solent and Southampton Waters SPA relates to its habitats which support overwintering birds. In addition to pressure from recreational activity, an increase in the population would also result in the increase in wastewater being discharged into the Solent, including pollutants or nutrients, such as nitrates and phosphates, which affect the water quality.
20. As the proposed development would add to the number of people living in the area, it would also increase the amount of wastewater being discharged into the Solent. Therefore, the proposed development, taken both in isolation and cumulatively with other projects, would be likely to have a significant adverse effect on the integrity of the Southampton and Solent Water SPA.
21. The appellant is intending to make use of available nitrate mitigation credits from Eastleigh Borough Council to mitigate the additional load. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further because it could not lead me to a different decision.

Planning balance and conclusion

22. The development would not harm the living conditions of neighbouring residents with respect to outlook. Although this is a neutral considerations, the development would comply with the development plan when read as a whole.
23. It is not disputed that the Council is falling significantly short of the required housing land supply, set out by the Council at 2.76 years. The shortfall in housing land supply within the Borough is therefore considerable. However, given that the

- development would deliver a single dwelling, only modest weight is attributed to the contribution that the development would make to reducing this shortfall.
24. Future occupiers of the dwelling would have reasonable access to a range of local services and facilities, which they would be likely to use and contribute to the ongoing support of. There would also be short-term benefits during the construction phase. However, given the small scale of the appeal scheme, only a little weight can be attributed to each of these benefits.
 25. The proposed development aligns with the Framework where it seeks to significantly boost the supply of homes. Furthermore, the Framework indicates that small and medium sites can make an important contribution towards meeting the housing needs of an area and are often built out quickly. The proposal would also correspond with those parts of the Framework that seek to support the economy and strong vibrant communities. However, because of the very small scale of the scheme, only little weight is accorded to each of these matters.
 26. The submitted application form indicates that the dwelling would be a self build. The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) states that an authority must give development permission for the carrying out of self-build and custom housebuilding on enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area in respect of each base period.
 27. Whilst the Council accept that it is failing in its statutory duty to meet the demand for self-build and custom housebuilding, as set out above, there is no mechanism before me to secure to proposal as self build. As such, in addition to the limited quantum of development in this case, I give this matter minor weight in favour of the proposal.
 28. There is limited evidence before me that the roof of the single storey side projection of the existing host property was used regularly for sitting out. As such, any benefit from the removal of potential harm to privacy in this respect is small. The appellant points to positive pre-application advice, however this is not binding and, as set out above, I have found harm.
 29. Notwithstanding the above considerations, the development would conflict with those parts of paragraph 187 of the Framework which require net gains for biodiversity. Due to the small scale of the proposal, moderate weight is attributed to this Framework conflict.
 30. Nevertheless, this conflict, when considered in combination with the failure of the proposed development to comply with Schedule 7A of the Town and Country Planning Act 1990, which carries substantial weight, clearly outweighs the previously identified benefits of the scheme.
 31. Although the proposal conforms with the development plan, the material considerations indicate that the appeal should be decided other than in accordance with it. As such this appeal should be dismissed.

B Phillips INSPECTOR