
Appeal Decision

Site visit made on 20 January 2025

by **S Harrington MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

Appeal Ref: APP/L1765/W/24/3346800

Land to the Rear of 74 and 76 Lovedon Lane, Kings Worthy, Hampshire SO23 7NS.

- 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 Chris Southcott, Maxwell Homes Winchester Ltd against the decision of Winchester City Council.
 - The application Ref is 23/01375/FUL.
 - The development proposed is erection of 1No. new detached bungalow along with car parking and use of existing access onto Lovedon Lane.
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Decision

1. The appeal is dismissed

Preliminary Matters

2. Following submission of the appeal, a copy of an Allocation Agreement between 'The Grange Hampshire LLP' and 'Maxwell Homes Winchester Ltd' dated 20 May 2024 (the Allocation Agreement), as well as a copy of a Section 106¹ Agreement referred to within the Allocation Agreement between Winchester City Council, The Grange Hampshire LLP and Barclays Bank PLC dated 24 May 2024 (S106) have been received. These documents relate to a strategy to mitigate the effect of the proposal on the River Itchen Special Area of Conservation (SAC).
3. The Allocation Agreement does not fundamentally change the proposal, is referred to within the Council's Planning Committee report and the Council was given an opportunity to comment on it as part of this appeal. In light of this, I am satisfied that no party would be prejudiced by my acceptance of the information. Therefore, having regard to the principles of Holborn², acceptance of the further information would not be procedurally unfair and as a result I have considered it in determining this appeal.

Background and Main Issues

4. The site falls within the catchment of the SAC which is subject to both nitrate and phosphate impacts. Although this does not form a reason for refusal on the Decision Notice, as the competent authority in relation to this appeal, I am required to consider this matter and the related duties, including the carrying out of an appropriate assessment where necessary, under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations).

¹ Town and Country Planning Act 1990 (as amended)

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

5. Consequently, the main issues are the effect of the proposal on:
- the integrity of the SAC;
 - the character and appearance of the area; and
 - the living conditions of the occupiers of neighbouring dwellings, with particular regard to noise and disturbance.

Reasons

Integrity of the SAC

6. The SAC is a European Site of Nature Conservation Importance and is subject to statutory protection under the Habitats Regulations. The SAC is designated for its water courses, Southern Damselfly, Freshwater Crayfish, Brook Lamprey, Atlantic Salmon, Bullhead and Otter. High levels of nutrients input to the water environment can impact on the competitive interactions between high plant species and algae, which can result in a dominance in attached forms of algae, and a loss of characteristic plant species, and the wider food web and species present.
7. The addition of residents associated with new dwellings which increase the amount of foul water produced in the SAC catchment area will be likely to increase levels of nutrients within the SAC. Significant effects from the development are therefore incapable of being ruled out and are considered likely.
8. I have been provided with a Nutrient Budget Calculator extract that provides calculated pre and post 2025 phosphorous and nitrogen outputs from the proposal. In order to seek to partly mitigate these outputs, the appellant has entered into the Allocation Agreement, which in-conjunction with the S106, seeks to provide the required level of nitrate and phosphate mitigation through a secured woodland planting scheme (mitigation package).
9. There is no planning obligation directly related to the proposal before me. However, if I were to allow the appeal, it has been suggested that a negatively worded condition could be imposed. This would prevent the occupation of the development until a water efficiency calculation and a mitigation package addressing the additional nutrient input arising from the development is submitted to and approved by the Council.
10. I have considered whether such a condition would, or could be amended sufficiently, to appropriately secure the required water efficiency and mitigation package, thereby providing sufficient certainty as required by the Habitats Regulations. I have also had regard to the views of Natural England. Given the requirements of the Allocation Agreement and S106, I am satisfied that a suitably worded condition, in combination with the Allocation Agreement (and associated S106) could provide sufficient certainty that mitigation in relation to the woodland scheme would be secured and delivered in perpetuity. However, the water efficiency requirement does not provide such certainty.
11. This is due to the condition only requiring a water efficiency calculation, to be approved by the Council. At this stage, whilst there is no 'retrofitting' of appliances, I have no details on the specifications of fittings and appliances to be used, or how these would be secured, enforced or otherwise monitored in the long term.

12. Furthermore, even if water calculator and water efficiency measures are fully inspected and 'signed off' by a building control body as is suggested to me by the appellant, this does not at this stage provide me as competent authority, with the certainty necessary to address this matter in this appeal.
13. Moreover, Planning Practice Guidance (PPG) provides advice whether such a condition could be used. However, while the principle is not ruled out, the PPG states that this is '*in exceptional circumstances...where there is clear evidence that the delivery of the development would otherwise be at serious risk.*' The PPG goes on to say that this may apply '*... in the case of particularly complex development schemes*'.
14. The scheme before me is for a single dwelling and, in my judgement, no exceptional circumstances have been presented for this course of action in this case. The proposal is not particularly complex and in light of my concerns in relation to water efficiency above, there are no clear reasons in the evidence before me why necessary certainty cannot be provided via alternative mechanisms and further information. Therefore, despite my findings on this main issue, I do not consider that the delivery of the development would be at serious risk so as to amount to exceptional circumstances to justify this course of action.
15. Consequently, in the absence of certainty that mitigation in respect of this issue would be delivered, I find that the proposal would significantly adversely affect the integrity of the SAC. The proposal would be contrary to Policy CP16 of the Winchester District Local Plan Part 1 – Joint Core Strategy 2013. This Policy seeks, amongst other things, to protect sites of European importance from inappropriate development.

Character and appearance

16. The appeal site is an area of garden to the rear of 74 and 76 Lovendon Lane, which feature long narrow plots. The area's residential character is formed by single and two storey properties that feature pitch roof forms and materials resulting in a largely traditional appearance, within a variety of plot sizes. Moreover, although the pattern of development in the area results in development that predominantly addresses a highway, there are examples of tandem development in the area including at Westfield Road and Ramsay Road.
17. The proposed dwelling would have a traditional hipped roof appearance, which reflects that of other single storey dwellings in the area and those seen along Lovendon Lane. Furthermore, whilst the plot would be smaller than that of some other properties along Lovendon Lane, it would not appear uncharacteristic given the variety of plot sizes. Additionally, given the proposed garden area around the dwelling, would not appear as cramped within its plot.
18. Moreover, due to the location of the appeal site to the rear of the host dwellings, the proposal would be largely screened from public viewpoints from Lovendon Lane. Where views would be available, such as a footpath to the rear, these would largely be of the roof form, which would be seen in conjunction with other residential development and would not appear incongruous or at odds with surrounding built form.
19. Consequently, I conclude that the proposal would not have a harmful effect on the character and appearance of the area. It would therefore accord with Policy DM16

of the Winchester District Local Plan Part 2 2017 (LPP2). This policy seeks, amongst other things, to ensure development responds positively to the character, appearance and variety of the local environment, within and surrounding the site, in terms of its design, scale and layout.

Living conditions

20. LPP2 Policy DM18 seeks to ensure appropriate provision is made for parking and access. This policy requires, amongst other things that development *'allows for access to, and movement within, the site in a safe and effective manner, having regard to the amenities of occupiers of the site and adjacent land and to the requirements of the emergency services and service providers, including turning facilities as appropriate'*.
21. Access to the proposal and its parking area would be via an existing driveway to the side of 74 Lovendon Lane, with parking for the host dwelling being within its existing front garden. The neighbouring property is sited adjacent the access and is separated by an existing boundary fence. Given the spatial relationship of the neighbouring property and 74 Lovendon Lane, the boundaries of the access drive would be in close proximity to both properties.
22. Nevertheless, the access drive is of sufficient width to allow vehicles to comfortably access the site without coming into close contact with the boundary of the access drive. Furthermore, the proposal provides for a turning area and parking provision for two vehicles, which swept path tracking diagrams within the Highway Appeal Statement³, indicate are sufficient for effective turning of an ambulance size vehicle.
23. Moreover, the number of movements associated with a single dwelling would be modest, and noise levels generated by the low number of vehicles attracted to the site would not be significantly greater than what would be expected to be experienced in a residential area. In combination with boundary fences which would reduce the visual disturbance created by moving vehicles and pedestrians from ground floor windows, the proposal would not result in any significant disturbance to the occupiers of neighbouring properties.
24. Therefore, I conclude that the proposal would not harmfully effect the living conditions of the occupiers of neighbouring dwellings, with particular regard to noise and disturbance and would accord with LPP2 policy DM18.

Other Matters

25. The proposal would provide an additional dwelling to the area's housing supply, and would contribute towards the local economy, both during the construction period, and from future occupation. However, given the small scale and scope of the scheme, the weight that I attribute to this benefit is modest.

Conclusion

26. Although I have found no harm with regard to character and appearance or living conditions of neighbouring occupiers with particular regard to noise and disturbance, the proposal would adversely affect the integrity of the SAC. As a result, the proposal is in conflict with the development plan, when read as a whole,

³ Nick Culhane Highway Consultant May 2024

and the environmental objective of the National Planning Policy Framework (Framework) would not be achieved.

27. There are no material considerations, including the Framework, that indicate that the proposal should be determined other than in accordance with the development plan. For the above reasons, and having considered all other matters raised, I therefore conclude the appeal should be dismissed.

S Harrington

INSPECTOR