



Appeal Decision

Site visit made on 10 June 2025

by **Martin Allen BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 August 2025

Appeal Ref: APP/W1715/W/25/3361240

Ropley, Botley Road, West End, Hampshire SO30 3HA

- 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 Pitter against the decision of Eastleigh Borough Council.
 - The application Ref is F/24/97943.
 - The development proposed is described as the “Proposed development of rear garden to create new access and 2 No new dwellings”.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether future occupiers would experience satisfactory living conditions, with particular regard to outlook, provision of light and noise,
 - Whether the site would be safe for future occupiers, with particular regard to possible contamination,
 - The effect of the proposal on the character and appearance of the area, with particular regard to the retention and provision of trees,
 - The effect of the proposal on biodiversity,
 - Whether appropriate Biodiversity Net Gain can be achieved, and
 - The effect of the proposal on protected sites.

Reasons

Living conditions

Outlook

3. The appeal site is significantly hemmed in to its boundaries, with a large and imposing commercial building sitting to one side boundary and large, dominant trees to another. The dwelling to plot 2 would be most significantly impacted by this context. Views from the kitchen/dining space would be out to a reasonably shallow garden and would be dominated by the trees and the elevation of the commercial building. This would restrict outlook in such a way as to result in an oppressive and uncomfortable environment for occupiers. Similarly, the outlook from the lounge of the property to the front would be towards the side of the commercial building, the

dwelling's parking area, and the neighbouring trees. Once more, this would result in an unsatisfactory environment for occupiers.

4. In respect of the dwelling on plot 1, the outlook from the lounge area of this property would also be towards the high elevation of the commercial building and the parking area, with the large trees present, once again resulting in a constrained outlook.

Light

5. As I outline above, the side boundaries of the appeal site are lined with high trees and a building. Given the orientation of these features and the narrow width of the site, and the path of the sun, they would result in the overshadowing of the development throughout a large portion of each day. As a result, the dwellings as well as the garden spaces would experience a dearth of sunlight, that would result in unappealing environments for occupiers. The presence of the features would also limit the amount of daylight that reaches both the dwellings and the gardens. There has been no daylight or sunlight assessment undertaken that would lead me to find differently.

Noise

6. The scheme is accompanied by an Environmental Noise Impact Assessment (the ENIA) which considers the effect of commercial and transportation noise on the occupiers of the proposed dwellings. The report concludes that subject to the construction of a 2.5-metre-high acoustic fence along the western boundary, noise levels would not be unacceptable. However, the acoustic fencing would not provide attenuation for the first-floor bedrooms, as they would be above its height. The ENIA concludes that noise to the bedrooms would be successfully mitigated through the use of acoustic glazing and acoustic trickle vents to provide ventilation. However, this would preclude the opening of any of the first-floor windows. This is an unlikely and unacceptable scenario given that many occupiers would seek to open windows, including during nighttime, for ventilation. If this were to take place, the noise level experienced by the occupiers would be intrusive and unacceptable.

Finding on living conditions

7. Drawing the above together, I find that future occupiers would not experience satisfactory living conditions, with regard to outlook, provision of light and noise. Accordingly, the proposal conflicts with policies DM1 and DM8 of the Eastleigh Borough Local Plan (adopted April 2022) (the Local Plan). Together, and amongst other things, these policies seek to ensure that development does not result in unacceptable impacts on new residents and is not permitted where there would be unacceptable impacts from noise.

Contamination

8. The site lies adjacent to a commercial site which is subject to industrial uses, this includes vehicle garages. From the information before me these uses have been in existence for a significant period of time and there is the potential for contamination of the ground to occur. Given the proximity of the appeal site to these industrial uses, there is also the possibility for contamination to have migrated into it. The scheme is supported by a brief soil contamination report which contains the results of the testing of two soil samples from within the site. There is no indication of

where within the appeal site these samples were taken from, what depth they were taken and whether any intrusive site investigations were undertaken. A walkover survey was also undertaken. The appellant asserts that there is no contamination present within the site. However, this cannot reliably be ascertained from the information that has been submitted to date given its scant nature.

9. As such, it has not been demonstrated that the site can be made safe for future occupiers, having regard to the possible contamination of the site. Thus, the development has not been shown to accord with policy DM8 of the Local Plan, which seeks to ensure that development is only permitted where there would not be a public health impact through land contamination.

Character and appearance

10. The rear of the appeal site, behind the existing dwelling, is heavily overgrown and as a result there are a number of trees located throughout it. The appeal is supported by a Tree Survey and Arboricultural Impact Assessment, which details that in order to accommodate the proposed development, it will be necessary to fell twenty-three of the trees that are present.
11. The Council has an adopted Supplementary Planning Document (the SPD) which advises on trees and development. This sets out that for Category C trees, as most are within the site, that a 1:1 replacement is required. The SPD also highlights that *“where trees are proposed in unsuitable locations, and it is felt that their full potential is unlikely to be met, these trees will not be considered as replacements for trees lost. For example, trees proposed in...inaccessible locations (such as enclosed rear gardens) will not be considered under this policy.”*
12. The Council highlights that details have been submitted which show the requisite number of replacement trees, but that in light of the location of at least twelve of these, they are not suitable replacements in line with the SPD and will not be able to grow to their full potential. This is due to the location within the proposed enclosed rear gardens and close to areas of hardstanding. While I am conscious of the advice of the SPD, I am also particularly mindful that the existing trees are already located within an enclosed garden area and are unlikely to reach full maturity, unhindered by the existing site constraints. Moreover, there is no Tree Preservation Order protecting the trees. I am also concerned at the Council's comments that *“Had the trees been removed before submission of the planning application, then a differing view may have been taken by the LPA,”* which appears to penalise the appellant for not removing the trees before submission of the application.
13. The majority of the trees within the appeal site have little effect on the appearance of the site from public vantage points and are categorised as Category C trees in any event, which while not necessarily requiring felling, are not the highest quality specimens. The appellant has put forward a scheme of replacement planting of trees throughout the site, both within enclosed rear gardens and within the open areas. Given the context of the site and the nature of the trees that are present, notwithstanding the guidance of the SPD, this would result in a softened appearance to the proposed scheme and would ensure that an acceptably landscaped development is delivered.
14. In addition to trees within the site, there are substantial and tall tree specimens positioned within the neighbouring property to the east and close to the site

boundary. These trees are visible from outside of the appeal site from the street and provide a pleasing relief amongst the built development. Along this boundary the new estate road is proposed that would be used to access the dwellings. This would be constructed up to the boundary and certainly within the root spread of the neighbouring trees. There is likely to be an impact on the trees as a result of this with damage likely to occur to the roots, and consequently the ongoing health of these trees would be compromised. No information has been submitted to show how any construction would mitigate such a harmful impact. Therefore, the development is likely to result in at the least damage to, or worst loss of, these trees which would remove an attractive natural element from the area.

15. Thus, the scheme would result in a harmful effect on the character and appearance of the area, through the potential loss of existing trees. Accordingly, the development would conflict with policy DM1 of the Local Plan, insofar as it seeks to ensure development does not result in the loss of trees that are of value to the character of an area.

Biodiversity matters

16. The application was accompanied by a Preliminary Ecological Appraisal (PEA) that indicates that the site accommodates habitats that are suitable for reptiles and amphibians, namely slowworms and greater-crested newts. The PEA recommends that further survey work be undertaken to ascertain likely presence or absence. The appellant asserts that such further survey work can be the subject of a planning condition on any permission, requiring them to be undertaken at a future point.
17. However, I am mindful of the guidance of Circular 06/2005 - Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system (the Circular). The presence of a protected species is a material planning consideration. The Circular clearly outlines that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Otherwise, all relevant considerations may not have been addressed in making the decision.
18. In light of the findings of the survey and the recommendations, I consider there to be a reasonable likelihood of protected species being present. Accordingly, detailed surveys establishing this, or otherwise, should be completed, and any necessary mitigation secured, before any permission is granted. The Circular further advises that the need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. I am not convinced that any such circumstances exist in this case.
19. Therefore, I have insufficient information to be able to be satisfied that the development would not have a harmful effect on protected species. Thus, I am unable to find that the proposal would accord with policy DM11 of the Local Plan, insofar as it requires development is only permitted where there are no unacceptable impacts on protected species.

Biodiversity Net Gain

20. The development is subject to the requirement to deliver a 10% biodiversity net gain. The Design and Access Statement submitted with the application includes

some details of the biodiversity metric that is a requirement to assess the pre-development value of the appeal site. This information is scant and appears to be incomplete. The Council's Ecologist sets out several deficiencies with this information, including that the guidance used is out of date and no supporting information of how the tables shown have been compiled, with no list of the habitats that are on site.

21. While the appellant sets out that the Council have failed to acknowledge the "novel" approach of planting on the proposed acoustic wall, it is not possible to have confidence that the requisite biodiversity net gain can be achieved, either on-site or off-site without at least the most basic information that an appropriately completed biodiversity metric should provide.
22. Therefore, while I am conscious that the Planning Practice guidance states that "*it would generally be inappropriate for decision makers, when determining a planning application for a development subject to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met*", in this case there is such a lack of information that there is no confidence that the biodiversity gain objective would be met. It would not be appropriate to allow this information to be delivered at any later stage, through the imposition of a planning condition. The development does therefore not comply with Schedules 7A and 14 of the Town and Country Planning Act 1990 (as amended) and the Environment Act 2021, respectively.

Protected Sites

23. The Council highlight that any residential development, given that the site lies within the 13.8-kilometre (km) catchment area for the New Forest Special Protection Area and within the 5.6km catchment area for the Solent Bird Aware Area, will have a possible impact on the Solent Special Protection Areas. If I were minded to allow the appeal it would be necessary to undertake an Appropriate Assessment, to ascertain if the development would result in any likely significant effect. It would then be necessary to consider what, if any, mitigation would be necessary. The appellant has stated that they accept that mitigation would be necessary to offset the impact of the proposed development but has not provided any mechanism for securing mitigation that may be required.
24. In any event, as I have found harm above sufficient to dismiss the appeal, the development subject of this appeal will not take place and thus there would be no resultant effect on these designated areas. As such, I have no need to consider this matter further.

Other Matters

25. The appellant has raised concern in respect of the consistency of the Council's decision making. However, I have assessed the scheme on its merits and on the basis of the information that is before me. This matter has therefore not influenced my consideration of the appeal.

Conclusion

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

Martin Allen

INSPECTOR