
Appeal Decision

Site visit made on 11 November 2025

by **J J Evans BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2025

Appeal Ref: APP/B1740/W/25/3371824

Sabina, 28 May Avenue, Lymington, Hampshire SO41 9DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr J Baldwin of Merryfield Homes Ltd against the decision of New Forest District Council.
 - The application Ref is 24/11073.
 - The development proposed is the demolition of the existing building and construction of four dwellings with associated parking and access (Outline application - access and layout only).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted for outline planning permission with approval sought at this stage for access and layout. Drawings submitted for the appeal include proposed site sections (dwg ref 100.04 C), with the appellant making it clear within the appeal submission that consideration is required at the outline stage only for access and layout. For the avoidance of doubt, the appeal has been determined on this basis, with all other matters reserved for future consideration.
3. One of the reasons for refusal of the original application was the impact of the proposal upon the protected habitat sites of the New Forest Special Protection Area (SPA), Special Area of Conservation (SAC), and Ramsar; the Solent Maritime SAC; the Solent and Southampton Waters SPA and Ramsar; and the Solent and Dorset Coast SPA, had not been adequately mitigated. To address these matters, during the appeal the appellant submitted a signed and dated Unilateral Undertaking (UU) to secure contributions for avoidance, mitigation and monitoring measures. The Council was provided with an opportunity to comment upon the UU, and this matter will be returned to later.

Main Issues

4. The main issues in this case are:
 - The effect of the scheme upon the character and appearance of the area; and
 - The effect upon protected habitat sites.

Reasons

Character and Appearance

5. 28 May Avenue (No 28) is a detached bungalow positioned within a residential area. May Avenue is a long straight cul-de-sac road, with mostly semi-detached houses of similar ages and styles to either side. At the end of the cul-de-sac there is a group of detached bungalows and houses, most of which are positioned in generous gardens.
6. A distinctive feature of the area is its topography and clusters of tall trees. At the end of the cul-de-sac the land slopes up towards the north. To the north and western boundaries of the appeal property there are steep banks, with detached houses and Tylers Close being at a much higher level. There are a variety of trees of a mix of evergreen and deciduous species near to the property boundary, including a holly and a sycamore that are protected with a Tree Preservation Order. The verdant diversity of these tall trees and those nearby makes a positive contribution to the identity of the area as they form green focal points amongst the houses, creating leafy skylines and backdrops to nearby buildings.
7. Policy ENV4 of the New Forest District Council Local Plan Part 1 Planning Strategy (2020) (LP) requires development to retain and successfully integrate features such as trees that contribute to the distinctive character within settlements. The plot is one of the larger ones in the area, and the dwellings would be positioned away from the steep banks and away from the trees and their crowns and root protection areas. Such measures would minimise the harm to the trees, thereby according with the requirements of this LP policy.
8. Scale is a reserved matter, albeit the layout drawings (ie Block Plan 4 100.03 G and RNapc/526/TPP/1) describe the dwellings as houses and chalet bungalows. It might be that the buildings and roofscapes would respect the scale and nature of nearby properties, but in this case, the unusual topography of the appeal site results in the houses to the north and west being at a considerably higher level than those proposed. Given this vertical separation, the proposed dwellings would need to harmonise with the other bungalows at the end of the cul-de-sac. This harmony would be particularly important given the prominence and views available of the appeal site because of the long straight nature of May Avenue.
9. There are a variety of plot sizes within the area, although as recognised in the Lymington Local Distinctiveness Supplementary Planning Document (2011), May Avenue has a planned appearance. The mostly semi-detached houses along the road form two distinct linear groups with a tight grain that is very different to the more generous gardens of the houses and bungalows at the end of the cul-de-sac. The size of these gardens and the presence of numerous tall trees within them gives a verdant spacious setting to these dwellings. Despite the three dwellings having back gardens to provide space for outdoor day-to-day living requirements, the constraints of the site are such that the consequential close proximity of homes in a row would result in a cramped and confined appearance.
10. In addition, the intensity of the development would appear discordant given the spacious nature of the other nearby detached properties at the end of the cul-de-sac. The scheme would appear as a dense concentration of homes that would harmfully disrupt the character of the area. When approaching the site when traveling from the east, the intensity of the development and its erosion of the spaciousness that characterises the end of the cul-de-sac would be conspicuously apparent.

11. The replacement dwelling would be in a similar position to the existing bungalow, thereby maintaining the curved building line that exists with nearby homes. Parking provision within the front garden of this property would accord with similar provision found within the front gardens of the nearby houses and bungalows. Nevertheless, the access road would be positioned close to the flank wall of the replacement dwelling, and the garden of this property would have a curiously contrived and irregular shape to accommodate parking for the houses to the rear. Even with the presence of landscaping to the site boundaries, the access road, parking, and manoeuvring spaces would combine to dominate much of the site. This, and the provision of parking spaces away from the dwellings they would serve, would all exaggerate the incongruously cramped and constrained nature of the scheme.
12. The area has experienced some change, as evident with the dwellings at Amberwood and 74A Southampton Road. However, both these and the house at 30 May Avenue are positioned within generous gardens, thereby maintaining the verdant spaciousness that characterises the end of the cul-de-sac. Given these differences, these comparisons do not form a binding reason for allowing the appeal.
13. The scheme would thereby unacceptably detract from the character and appearance of the area, and the suggested conditions would not overcome these fundamental harms. Although the proposal would accord with the requirements of LP Policy ENV4, there would be conflict with LP Policy ENV3 as this seeks amongst other things, high quality design that contributes positively to local distinctiveness and enhances the character and identity of the locality.

Habitat Sites

14. The New Forest SAC, SPA and Ramsar recognise the national and international importance of these habitats that include bogs, marshes, heaths and woodlands that support a variety of rare birds and insects. These sites are under significant pressure from public access and use, and a net increase in the number of dwellings and occupiers in the area would increase the pressure upon them, eroding their integrity that includes through use of the sites causing habitat destruction and disturbance to species. In addition, traffic growth results in further significant adverse effects as a result of nitrogen and ammonia deposition and pollution, particularly near main road corridors.
15. Additional residents arising from the dwellings would result in increased waste water and thereby further nutrients would enter into the River Solent catchment, which impacts upon the integrity of the Solent and Southampton Waters SPA and Ramsar, the Solent Maritime SAC, and also the Solent and Dorset Coast SPA. These estuarine and adjacent coastal habitats are important because of the populations of migratory and wading birds they support, including breeding birds and wintering wildfowl. Nutrient enrichment contributes to the growth of weed mats that can smother estuarine habitats, thereby restricting the foods available for wading birds.
16. Given the location of the appeal site, future occupiers would be likely to impact upon these habitat sites thereby having a significant effect upon their integrity, as a result of increased recreational pressures, air quality impacts, and nutrients in waste water. The Conservation of Habitats and Species Regulations (2017) (the

Regulations) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from a proposal, either alone or in combination with other schemes, a duty that falls to occur with the appeal. The appellant has provided a UU to secure mitigation measures for the habitat sites, and has accepted the Council's suggested Grampian condition to address nutrient levels.

17. In considering the UU, the Council has raised several concerns, including that the signatory is not the legal owner of the property. Whilst the appellant has explained the signatory to the UU holds a power of attorney, in such situations and as advised in the Planning Obligations Good Practice Advice (2025), documentary evidence should have accompanied the UU demonstrating this. There are also other concerns which include the triggers for payment.
18. As the appeal is being dismissed for other reasons, these matters have not been pursued with the appellant. As the UU cannot therefore be relied upon to secure and achieve the required mitigation measures, it is not necessary to undertake Appropriate Assessments nor give further consideration to the likely effectiveness of the mitigation measures proposed, including the suggested Grampian condition.
19. Given these findings, the proposal would adversely affect the integrity of the protected habitat sites. These harms would conflict with the requirements of LP Policy ENV1 and Policy DM2 of the New Forest District Council Local Plan Part 2: Sites and Development Management Plan (2014) (SDMP), as these seek amongst other things, to ensure that there will not be adverse effects on the integrity of protected habitat sites.

Other Matters

20. Local residents have raised a number of concerns, including subsidence, construction noise and disturbance, and increased vehicular usage and parking pressures within the area. Following the findings on the main issues, there is no need to consider these matters further.
21. The appellant has raised concerns regarding the Council's handling of the original application, including the requirement for revisions to the scheme. Such matters fall to be pursued by other means and have no bearing on the consideration of the planning merits of the case.

Planning Balance

22. The Council has acknowledged that it cannot demonstrate a five year supply of deliverable housing sites, with the appellant referring to the 1.5 years supply as being an acute shortfall. In such circumstances, the National Planning Policy Framework (the Framework) requires that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, such as habitat sites, provide a strong reason for refusing the development.
23. The scheme would conflict with development plan policies that seek to protect the integrity of habitat sites and the character and appearance of the area. The Framework requires due weight to be given to existing development plan policies according to their degree of consistency with the Framework. LP Policy ENV3 is broadly consistent with objectives within the Framework that require development

to be visually attractive as a result of layout, as well as being sympathetic to local character, including the surrounding built environment. As regards LP Policy ENV1 and SDMP Policy DM2, these are also broadly consistent with the Framework and its requirement to refuse planning permission where there would be harm to habitat sites. The conflict of the scheme with these policies should therefore be given significant weight.

24. There would be benefits arising from the scheme, that include the important benefit of the provision of an additional three dwellings and the moderate benefit of future occupiers being close to the services and facilities within the nearby town centre. The Framework requires an effective use of land in meeting the need for homes, affording great weight to the development of windfall sites within existing settlements, and also recognises that small sites and higher densities can make an important contribution to meeting housing needs within an area, particularly if they can be built quickly. These benefits would also weigh in favour of the development.
25. Notwithstanding these benefits, whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. In this case the harms regarding the habitat sites provide a strong reason for refusing the development, despite the aforementioned benefits.

Conclusion

26. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR