



Appeal Decision

Site visit made on 21 October 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2020

Appeal Ref: APP/B1740/W/20/3256613

St Jude, Roman Road, Dibden Purlieu SO45 4QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Phil Sellwood against New Forest District Council.
 - The application Ref 20/10399, is dated 7 April 2020.
 - The development proposed is erection of four dwellings, with associated works, carports and parking, with new vehicular access onto Roman Road and stopping up of existing access serving St Jude's (resubmission of application 19/10747).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that, had it been in a position to determine the application, it would have refused it for a single reason relating to its effect on the character and appearance of the area.
3. As part of the appeal, a revised plan was submitted showing revisions to the scale and form of plots 2, 3 and 4. Where amendments are proposed, regard should be had to the 'Wheatcroft'¹ principles - including whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. As the plans detail relatively minor amendments considered in context with the scheme overall, and the nature of concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I take the amended plans into account. I shall therefore determine the appeal on the basis of the plans referred to on the decision notice, as well as the amended plans submitted as part of the appeal.
4. Following the site visit, a planning obligation made by way of unilateral undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 was submitted in relation to the effects of the proposal on the European Protected Sites². I shall return to this matter later in my decision.

¹ Wheatcroft Ltd V SSE [1982]

² New Forest Special Area of Conservation, New Forest Special Protection Area and RAMSAR site, Solent and Southampton Water SPA and RAMSAR site, Solent & Isle of Wight Lagoons SAC, Solent Maritime SAC

Main Issues

5. In light of the putative reason for refusal, the main issue in this case is the effect of the development on the character and appearance of the area.

Reasons

Character and appearance

6. The originally submitted plans for a scheme of four dwellings sought to overcome a number of issues raised in a previous appeal decision³ for a similar scheme. I note my colleague's description of the appeal site, host dwelling and wider surroundings and that little appears to have changed since that time. The proposals now before me, still take the form of a scheme of four dwellings, two detached, two semi-detached and with associated features and landscaping, including car ports, has resulted from further dialogue between the parties during the consideration of the appeal application.
7. Plot 1 would sit on the opposite side of the access road to the existing host dwelling, St Jude. It would front onto Roman Road in the same manner as St Jude and would be broadly similar in proportion. Whilst the Council refer to an 'inoffensive' architectural style, I find that it would be contextually appropriate and aptly reflective of those found in the wider area. Its construction materials would not replicate that of the distinctive St Jude, but to provide a pastiche version would undermine the contribution made by the host dwelling within the streetscene. However, the form, bulk, design and appearance of Plot 1 would be appropriate within the context of the existing surrounding development.
8. The reduction in scale and alterations to the form and layout of Plot 2 would result in it presenting a polite double fronted elevation to the street, with a return wing back towards the eastern boundary. The alterations would result in a far better relationship between it and the nearby dwellings at Heatherdown (Nos 1 and 2) and with the internal street. With a tile-hung clad upper and brick lower, along with gabled features, cottage-style fenestration, porch canopy and appropriate detailing, the style and appearance of Plot 2 would be of a good quality and contextually appropriate with reference to a New Forest cottage-style of development.
9. In comparison to the originally submitted plans, Plots 3 and 4 have stayed in relatively the same position but would be much reduced in scale. They would appear as a semi-detached pair of New Forest Cottages, presenting handed front elevations to form a balanced frontage to the street scene. The dwellings would have rearward projections but these would be inset towards their shared centre boundary in order to create an improved relationship with the existing neighbouring dwelling at No 2 Heatherdown. The Plots would have a similar front building line to that of Nos 2, 3 and 4 Heatherdown which would create some consistency of layout considered within a wider context.
10. Overall, the introduction of the dwellings onto the site would result in a change to the sense of spaciousness that currently exists. However, the proposed dwellings would be appropriately scaled and laid out so as to maintain the pattern of development found in the immediate surroundings and avoid the site appearing overdeveloped. The design of the scheme and its component parts is more holistic than in the originally submitted plans or those before my

³ APP/B1740/W/19/3239470

colleague in the previous appeal. The retention of existing trees and boundary features would help to soften the impact of the new development within the wider streetscene and conditions to seek additional landscaping measures would provide further enhancements.

11. Therefore, for the reasons set out above, the proposal would maintain the character and appearance of the area and accord with Policies D1 and D3 of the Hythe and Dibden Neighbourhood Plan⁴ and Policies STR1 and ENV3 of the LPP1⁵. Collectively, amongst other things, these Policies seek exemplary standards of design and architecture, to demonstrate that local character and context has been fully recognised and that new development shall contribute positively to local distinctiveness and quality of life.

Other Matters

Protected Sites

12. The project site lies within the zones of influence of the European Protected Sites for which there is a significant range of habitat types and species and associated conservation objectives. Clearly, this project is not directly connected with or necessary to site management for nature conservation.
13. As identified through the Plan for the area and through the project-specific assessment, the proposal is likely to have a significant effect (LSE) on internationally important interest features of the site alone and in combination with other plans and projects. The potential for the development to have likely significant effects on the integrity of the European Protected Sites, both alone, and in combination with other plans or projects, would principally arise from an increase in population. This is due to associated recreational disturbance, the generation of additional wastewater, and air pollution from additional vehicular movements. Some pollution would also be generated during construction.
14. An appropriate assessment (AA) was undertaken and forwarded to Natural England as the statutory nature conservation body (SNCB). Natural England returned comments on the 22 December 2020. As competent authority, I have taken the comments of the SNCB into account in reaching my decision.
15. The submitted UU provided mitigation contributions for Habitats Mitigation (Access, Management and Monitoring) and for Infrastructure as defined in the UU. These measures are in line with the current strategic mitigation scheme as set out in the Solent Recreation Mitigation Strategy⁶, and Natural England consider it sufficient to avoid an adverse impact to the integrity of the European sites and relevant features. Confirmation had been received that the contributions had been paid as per the UU, and Natural England has confirmed its satisfaction with these measures.
16. The UU also provided for a contribution towards the monitoring of air quality effects within the New Forest SPA, SAC and RAMSAR sites in accordance with the LPP1. The contribution had been paid as per the UU, addressing this aspect to the satisfaction of Natural England.

⁴ Hythe and Dibden Neighbourhood Plan 2018 – 2026 (made December 2019)

⁵ New Forest District Local Plan 2016-2036 Part 1: Planning Strategy (adopted July 2020)

⁶ Mitigation Strategy for European Sites Supplementary Planning Document 2014 (SPD)

17. The likely significant effect relating to additional wastewater is the aspect for which there is as yet no defined mitigation strategy. It appears that the Council are working on a New Forest Nutrient Mitigation Strategy and that until the strategy is adopted, an interim approach⁷ is being followed as outlined in an Advice Note⁸. The interim approach requires applicants to either produce a site-specific mitigation scheme that achieves nutrient neutrality or the use of a Grampian condition to ensure the provision of an avoidance and mitigation scheme prior to occupation of the development.
18. No site-specific mitigation scheme has been put forward with the appeal proposal but the appellant has agreed to the imposition of a Grampian condition to require the submission of a mitigation package to address the additional nutrient input arising from the development and for the occupation of any dwellings to be prevented until all measures forming part of that mitigation package have been provided to the Council.
19. At this stage, nothing has been submitted, based on the best available scientific evidence or otherwise, to indicate that such additional nutrient loading would not have an adverse effect on the integrity of the European Protected Sites. I cannot be certain that such measures are capable of being devised. Were the mitigation measures to include any payment of contributions, the Planning Practice Guidance advises that it is not acceptable to require applicants to enter into a planning obligation or other agreement via negatively worded contributions unless in exceptional circumstances. I acknowledge that the need to mitigate against the adverse effect of nutrients has provided a challenge to the delivery of housing in the Council area. However, in the context of a general need to comply with the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), there is nothing uniquely exceptional in this. Exceptional circumstances which might justify use of such a condition do not therefore exist.
20. Furthermore, Natural England would also expect that the discharge of any such Grampian condition would need to be subject to a further AA, including full details of the development and mitigation nitrogen budgets, upon which further consultation with the SNCB would be expected. I cannot predetermine the outcome of any future AA. Thus, the effectiveness of any measures put forward are uncertain and would need to be thoroughly tested as part of an AA.
21. Alternative solutions to the scheme that would have lesser impact on the integrity of the Solent sites clearly exist. This is because at any given site the provision of appropriately evidenced, scaled, and secured mitigation in line with the Advice Note could potentially address LSEs. As such, and given the failure of the appeal scheme in this regard, allowing the appeal would be contrary to the Habitats Regulations. It would also be contrary to advice in paragraph 175(a) of the Framework, which indicates that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for.
22. In view of my reasons above, I conclude that the development would have an LSE on the integrity of the Solent sites due to the additional generation of nutrients and the lack of appropriate and appropriately secured mitigation. The proposal would therefore conflict with LPP1 Policies STR1 and ENV1, which only

⁷ Position Statement on Nutrient Neutral Development: Interim Nitrogen Mitigation Solution, September 2019

⁸ Natural England Advice on Achieving Nutrient Neutrality for New Development in the Solent Region

- permit development that will not result in adverse effects on the integrity of any of the relevant protected sites.
23. There are a number of matters raised which do not appear to be in dispute between the parties. However, in the interests of comprehensiveness, I have considered the effects of the proposal on many of these areas.
24. In terms of the effect on protected trees, subject to conditions, there would be adequate protection during the construction phase and lifetime of the development. Their contribution to the character and appearance of the area would therefore be maintained.
25. In terms of the effects on the living conditions of neighbouring occupiers, the amended plans provide for better proportioned dwellings where they are sited in close proximity to existing dwellings to avoid any undue overbearing or overshadowing effects. The omission of windows on the respective elevations facing towards other dwellings would also avoid any harmful overlooking.
26. In terms of highway safety, an existing access point would be retained and improved with adequate sight lines. Though there are concerns about the speed of traffic and additional volume of traffic utilising Roman Road which would be exacerbated by the proposal, the addition of four dwellings and associated vehicle movements would be capable of being accommodated by the existing highway network.
27. The effects of the proposal on the ecological value of the site has been assessed. The Council's specialist advisor has reached a conclusion that there are no objections subject to conditions to secure biodiversity mitigation and enhancement measures, including final precautionary checks for bats.
28. I note that the Council can now demonstrate an adequate five year supply of housing land. The windfall contribution of four dwellings in a sustainable location is a notable benefit of the appeal scheme. The absence of other harms, including from the mitigation contributions secured by the UU, attracts neutral weight in the overall balance. Whilst the Council indicate that the scheme detailed in the amended plans is still finely balanced, I consider that the density and layout of the latest four-dwelling scheme, coupled with the scale, form and appearance of the dwellings would result in a development that complies with the development plan in this regard.
29. However, having undertaken an AA on the potential effects of the scheme on the European Protected Sites, I cannot rule out significant effects at this stage, or in the future with sufficient certainty, contrary to the Development Plan. Consequently, the benefits are outweighed by the unacceptable harm that would be caused to the integrity of the European Protected Sites. In this case material considerations do not therefore indicate that the appeal should be determined other than in accordance with the development plan.

Conclusion

30. For the reasons set out above, I conclude that the appeal should be dismissed, and that planning permission should be refused.

Hollie Nicholls

INSPECTOR