

Application Number: 16/11527 Full Planning Permission

Site: Land of 11 & 15, UPLANDS AVENUE, BARTON-ON-SEA,
NEW MILTON BH25 7BJ

Development: 2 bungalows; parking; access; associated works

Applicant: AJ Developments Ltd

Target Date: 29/12/2016

1 REASON FOR COMMITTEE CONSIDERATION

Contrary to Town Council View

2 DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Built-up area

3 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES

Core Strategy

Objectives

- 1. Special qualities, local distinctiveness and a high quality living environment
- 3. Housing
- 6. Towns, villages and built environment quality

Policies

- CS2: Design quality
- CS15: Affordable housing contribution requirements from developments
- CS24: Transport considerations
- CS25: Developers contributions

Local Plan Part 2 Sites and Development Management Development Plan Document

DM3: Mitigation of impacts on European nature conservation sites

4 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Section 38 Development Plan
Planning and Compulsory Purchase Act 2004
National Planning Policy Framework

5 RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS

SPD - New Milton Local Distinctiveness
SPD - Mitigation Strategy for European Sites

6 RELEVANT PLANNING HISTORY

- 6.1 2 bungalows; landscaping; parking (outline application with details only of access, layout & scale) (16/10142) - refused 23/3/16 - appeal dismissed

7 PARISH / TOWN COUNCIL COMMENTS

New Milton Town Council:- Strongly object - the layout is contrary to New Milton Local Distinctiveness SPD in terms of building line, green infrastructure, Green Setting and Rhythms, and would therefore heavily undermine the character of the locality; the proposed backland development would be contrary to policy; proposal would set an unwanted precedent; members feel that the previous appeal inspector did not hold the Local Distinctiveness Study in full regard when deciding the recent appeal.

8 COUNCILLOR COMMENTS

None

9 CONSULTEE COMMENTS

- 9.1 Hampshire County Council Highway Engineer: no objection subject to conditions
- 9.2 Ecologist: no objection subject to measures of the ecology report being secured by an appropriate condition
- 9.3 Tree Officer: no objection subject to condition

10 REPRESENTATIONS RECEIVED

- 10.1 13 letters of objection / concern from neighbouring properties / local residents:- proposal would destroy the integrity of the neighbourhood; adverse impact on unique and distinctive character of Uplands Avenue; inappropriate backland development; overdevelopment of site; development would be overbearing and out of keeping with adjacent development; loss of collective greenspace; adverse impact on trees; precedent; increased traffic will destroy the quiet ambience of the road; inadequate on-site parking; unacceptable destruction of wildlife habitat; noise disturbance; adverse impact on neighbours' security; loss of neighbours' outlook; concerns about drainage; concerns about landscaping; disagree with conclusions of recent appeal decision, which does not have adequate regard to New Milton Local Distinctiveness SPD; planning policies have changed since other backland developments have been permitted; conflict with covenants.

11 CRIME & DISORDER IMPLICATIONS

No relevant considerations

12 LOCAL FINANCE CONSIDERATIONS

If this development is granted permission and the dwellings built, the Council will receive New Homes Bonus in each of the following six years from the dwellings' completion. Following the Government Autumn Statement on 17 November 2016 the exact figures in respect of each new property are yet to be confirmed.

From the 6 April 2015 New Forest District Council began charging the Community Infrastructure Levy (CIL) on new residential developments.

Based on the information provided at the time of this report this development has a CIL liability of £15,509.54.

Tables setting out all contributions are at the end of this report.

13 WORKING WITH THE APPLICANT/AGENT

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council take a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.
- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.
- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.
- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.
- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case, all the above apply and as the application was acceptable as submitted no specific further actions were required.

14 ASSESSMENT

14.1 The application site comprises a couple of detached bungalows that are set back from the road within generous sized garden plots. Both garden plots have a mature character, there being extensive areas of shrubbery and mature trees growing in both plots. Uplands Avenue is characterised by detached dwellings, some of which are single-storey like those on the application site, and others of which are 2-storeys high. All properties are set within good sized garden plots, which gives the area an attractively green and spacious character. The properties to the rear of the application site in Westbury Close are modest detached bungalows set within more modest garden plots than those that typify Uplands Avenue.

- 14.2 The submitted application seeks to build 2 new detached bungalows to the rear of 11 and 15 Uplands Avenue, which would be served by a new access route between the 2 existing dwellings. An additional area of parking is also proposed to the front of 15 Uplands Avenue. The application follows on from a similar application that was refused by the Local Planning Authority in March 2016, albeit that the previous refusal was for an outline application rather than the full planning application that has now been submitted.
- 14.3 The Local Planning Authority refused the previous application at this site on the basis that the development would have been a contextually inappropriate development that would have been detrimental to local distinctiveness. It was specifically felt that the development would have constituted an inappropriate backland development that would have been out of keeping with the typical pattern and form of other development in Uplands Avenue. It was also felt that the development would have resulted in a harmful loss of mature trees and vegetation. However, in considering a subsequent appeal, an appeal inspector took a different view. He concluded that the development would not cause unacceptable harm to the character and appearance of the area. While the appeal inspector disagreed with the Local Planning Authority on this key issue, he nonetheless dismissed the appeal on the basis that he could not be sure that the development would be acceptable in terms of its effect on designated European sites.
- 14.4 The Local Planning Authority's normal approach to ensure compliance with Local Plan Part 2 Policy DM3 is to impose a negatively worded condition on any planning permission, effectively requiring an applicant to enter into a Section 106 legal agreement with the Council before the commencement of development, through which habitat mitigation measures (usually a financial contribution) can then be secured. However, the appeal inspector felt that a condition along these lines is contrary to Planning Practice Guidance and should not therefore be imposed. The appeal inspector's position is a view that has been shared by some other appeal inspectors, but not by all.
- 14.5 It is accepted that the Council's standard approach of imposing a condition to secure habitat mitigation measures does not sit comfortably with Planning Practice Guidance. However, it is maintained that the Council's approach of imposing a condition is still the most reasonable and appropriate way of ensuring compliance with Local Plan Policy DM3. The difficulty with trying to secure habitat mitigation measures through a Section 106 legal agreement before a permission is issued (rather than through a condition) is that such an approach would conflict with the Community Infrastructure Levy (CIL) Regulations. The CIL Regulations make it clear that where CIL is applicable (as it is here), Local Planning Authorities should not then seek Section 106 contributions towards infrastructure (which would include the main element of the habitat mitigation contribution required under policy). Accordingly, the CIL Regulations preclude the Local Planning Authority's ability to effectively secure habitat mitigation contributions before an application is determined, noting that it is possible for applicants to gain relief from CIL contributions. Therefore, it is felt the only reasonable way in which the habitat mitigation requirement can be secured is through a condition, notwithstanding what is said in Planning Practice Guidance. It should be noted that if the appeal inspector's conclusions on this matter were to be accepted and followed, there would then (because of the CIL

Regulations) be little option but to refuse all planning applications for additional dwellings, which would simply not be a reasonable or tenable position for any Local Authority to take. Therefore, if it is concluded that the application is acceptable in all other respects, it is considered that it would still be appropriate to apply the Council's standard habitat mitigation contribution to ensure compliance with Local Plan Part 2 Policy DM3.

- 14.6 The appeal inspector's conclusion that the previous development proposal had an acceptable impact on the character and appearance of the area was a disappointing conclusion, not least because the appeal decision failed to acknowledge or recognise some of the key advice within the New Milton Local Distinctiveness Supplementary Planning Document (SPD). Specifically, the SPD identifies the rear gardens of 11 and 15 Uplands Avenue as forming a group of tranquil garden space that is important to local distinctiveness. The appeal decision failed to recognise this. The SPD also identifies the trees / tree group within the rear gardens of 11 and 15 Uplands Avenue, and in other adjacent rear gardens as being an important tree group. Again, this was not recognised in the appeal decision. The appeal decision also apparently ignored some key advice in the SPD. Notably, the SPD states that "Collectively, rear gardens through their greenery, tranquillity and biodiversity often form a strong part of the distinctiveness of an area. A single insertion of development into the collective rear garden space of a group of dwellings can destroy the integrity of the whole." The SPD goes on to advise that "Backland development which breaks into and destroys a peaceful oasis of rear garden land should be avoided". It is regrettable that this key advice appears to have been ignored.
- 14.7 Instead of demonstrably considering the significance of collective areas of rear garden to local distinctiveness, the appeal decision focused on the density of the development, which it noted would be similar to that of properties in Westbury Close to the west. As such, the appeal inspector was satisfied that the dwellings would sit comfortably within their plots and would not therefore appear cramped. The appeal decision did note that there are other examples of backland development in the wider locality, but without recognising that these are not in areas that the SPD identifies as forming a group of tranquil garden space. The appeal decision also noted the overgrown nature of the site and the fact that most of the trees are of low quality or unsuitable for retention. The appeal inspector therefore felt that removal of much of this vegetation would be acceptable subject to a suitable landscaping scheme. This is not disputed, although it is important that the trees to be removed are considered not just from an arboricultural perspective, but in terms of their contribution to landscape character.
- 14.8 The appeal inspector's overall conclusion that the degree of change to the site would not cause unacceptable harm or bring the proposal into conflict with the development plan is felt to be a questionable conclusion in the light of the advice of the Council's SPD which was perhaps not given the weight it should have been. Nonetheless, it was the inspector's conclusion, and must therefore be afforded significant weight when considering this latest application. Even though the current application is a full application, it would have effectively the same impact as the impact of the previous proposal that the appeal inspector deemed to be acceptable. Therefore, a refusal of planning permission on the basis that the development would be harmful to the character and appearance of

the area would be a very difficult argument to sustain at a further appeal. Indeed, such a refusal would run a significant (though not inevitable) risk of being deemed unreasonable behaviour where a substantive award of costs could be awarded against the Local Planning Authority. National Planning Practice Guidance advises that persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable is an example of unreasonable behaviour where substantive costs may be awarded to an appellant. Given this risk of costs, it is felt, with some regret, that the only reasonable conclusion that can be reached is to accept the conclusion of the previous appeal inspector and thereby conclude that the development's impact on the character and appearance of the area is acceptable, notwithstanding the advice of the Council's SPD.

- 14.9 The previous application was also initially refused for ecological reasons, but following the submission of relevant ecological surveys, the appeal inspector was satisfied that the development would have an acceptable impact on ecological interests.
- 14.10 With their single-storey design, the proposed dwellings would not have any material adverse impact on the light, outlook or privacy of any neighbouring dwelling.
- 14.11 The Highway Authority have raised no objection to the access arrangements, and the level of on-site parking would also be appropriate. Therefore, the development is not considered to have any adverse impact on highway safety.
- 14.12 Any grant of planning permission should be subject to a landscaping condition to ensure appropriate new planting to help mitigate for the significant areas of greenery that would be lost.
- 14.13 In the light of National guidance issued in May 2016, it is not felt that a contribution to affordable housing should be sought, even though this would be at odds with Policy CS15 of the Council's Core Strategy which requires many small scale housing developments including the current application proposals to make affordable housing provision. It should be noted that the appeal inspector who considered the recent development has already concluded that no affordable housing contribution should be provided in the light of the change to National Guidance.
- 14.14 Overall, the acceptability of this proposed development must inevitably be informed by the recent appeal decision. On the issue of the habitat mitigation contribution, it is felt there is little option but to disagree with the appeal inspector and conclude that the development's impact on designated European sites could be reasonably and appropriately mitigated through a condition. On the issue of the development's impact on the character and appearance of the area, it is felt that the most appropriate option would be to accept his conclusions, namely that the development would have an acceptable impact on the character and appearance of the area, and would thereby be consistent with Policy CS2 of the Core Strategy. Accordingly, it is recommended that planning permission be granted for this proposal subject to conditions.
- 14.15 In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of

possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

Section 106 Contributions Summary Table

| | | | |
|-----------------------------|--------------------------------|-------------------------------------|-------------------|
| Proposal: | | | |
| Type of Contribution | NFDC Policy Requirement | Developer Proposed Provision | Difference |
| Affordable Housing | | | |
| No. of Affordable dwellings | 0 | 0 | 0 |
| Financial Contribution | £73,440 | 0 | -£73,440 |
| Habitats Mitigation | | | |
| Financial Contribution | £8500 | 0 | |

CIL Summary Table

| Type | Proposed Floorspace (sq/m) | Existing Floorspace (sq/m) | Net Floorspace (sq/m) | Chargeable Floorspace (sq/m) | Rate | Total |
|------|----------------------------|----------------------------|-----------------------|------------------------------|------|-------|
|------|----------------------------|----------------------------|-----------------------|------------------------------|------|-------|

| | | | | | | |
|-----------------|-----|---|-----|-----|---------|-------------|
| Dwelling houses | 186 | 0 | 186 | 186 | £80/sqm | £15,509.54* |
|-----------------|-----|---|-----|-----|---------|-------------|

| | |
|----------------|------------|
| Subtotal: | £15,509.54 |
| Relief: | £0.00 |
| Total Payable: | £15,509.54 |

* The formula used to calculate the amount of CIL payable allows for changes in building costs over time and is Index Linked using the All-in Tender Index Price published by the Build Cost Information Service (BICS) and is:

$Net\ additional\ new\ build\ floor\ space\ (A) \times CIL\ Rate\ (R) \times Inflation\ Index\ (I)$

15. RECOMMENDATION

Grant Subject to Conditions

Proposed Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development permitted shall be carried out in accordance with the following approved plans: 8689/200, 8689/201, 8689/202.

Reason: To ensure satisfactory provision of the development.

3. Before first occupation of the development hereby approved, a surface water sustainable drainage system (SuDS) shall be designed and installed to accommodate the run-off from all impermeable surfaces including roofs, driveways and patio areas on the approved development such that no additional or increased rate of flow of surface water will drain to any water body or adjacent land and that there is capacity in the installed drainage system to contain below ground level the run-off from a 1 in 100 year rainfall event plus 30% on stored volumes as an allowance for climate change as set out in the Technical Guidance on Flood Risk to the National Planning Policy Framework.

Infiltration rates for soakaways are to be based on percolation tests in accordance with BRE 365, CIRIA SuDS manual C753, or a similar approved method.

In the event that a SuDS compliant design is not reasonably practical, then the design of the drainage system shall follow the hierarchy of preference for different types of surface water drainage system as set out at paragraph 3(3) of Approved Document H of the Building Regulations.

The drainage system shall be designed to remain safe and accessible for the lifetime of the development, taking into account future amenity and maintenance requirements.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with Policy CS6 of the Core Strategy for the New Forest District outside the National Park and the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.

4. Before development commences, samples or exact details of the facing and roofing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be implemented in accordance with the approved details.

Reason: To ensure an acceptable appearance of the development in accordance with policy CS2 of the Core Strategy for the New Forest District outside the National Park.

5. Before development commences a scheme of landscaping of the site shall be submitted for approval in writing by the Local Planning Authority. This scheme shall include :
- (a) the existing trees and shrubs which have been agreed to be retained;
 - (b) a specification for new planting (species, size, spacing and location);
 - (c) areas for hard surfacing and the materials to be used;
 - (d) the treatment of the boundaries of the site and other means of enclosure;
 - (e) a method and programme for its implementation and the means to provide for its future maintenance.

No development shall take place unless these details have been approved and then only in accordance with those details.

Reason: To ensure that the development takes place in an appropriate way and to prevent inappropriate car parking to comply with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

6. The development hereby permitted shall not be occupied until the spaces shown on the approved plans for the parking of motor vehicles have been provided. These spaces shall thereafter be retained and kept available for their intended purposes at all times.

Reason: To ensure adequate parking provision is made in the interest of highway safety and in accordance with Policy CS2 and CS24 of the Local Plan for the New Forest outside of the National Park (Core Strategy).

7. Before the commencement of development, details of the proposed cycle storage / parking facilities shall be submitted to and approved by the Local Planning Authority. The dwellings shall not be occupied until the approved cycle parking areas have been provided, and these cycle parking areas shall be permanently retained thereafter.

Reason: To ensure adequate cycle parking is provided and to comply with policies CS2 and CS24 of the Core Strategy for New Forest District outside of the National Park.

8. The works hereby approved shall be undertaken in strict accordance with the Ecological Survey methodology and details (Ref 25042016) dated 8/5/2016 unless otherwise first agreed in writing with the Local Planning Authority.

Reason: To safeguard protected species in accordance with Policy CS3 of the Local Plan for the New Forest District outside of the National Park (Core Strategy) and Policy DM2 of the Local Plan for the New Forest District outside the National Park (Part 2 : Sites and Development Management).

9. No development shall be carried out until proposals for the mitigation of the impact of the development on the New Forest and Solent Coast European Nature Conservation Sites have been submitted to and approved in writing

by the local planning authority, and the local planning authority has confirmed in writing that the provision of the proposed mitigation has been secured. Such proposals must:

- (a) Provide for mitigation in accordance with the New Forest District Council Mitigation Strategy for European Sites SPD, adopted in June 2014 (or any amendment to or replacement for this document in force at the time), or for mitigation to at least an equivalent effect;
- (b) Provide details of the manner in which the proposed mitigation is to be secured. Details to be submitted shall include arrangements for the ongoing maintenance and monitoring of any Suitable Alternative Natural Green Spaces which form part of the proposed mitigation measures together with arrangements for permanent public access thereto.
- (c) The development shall be carried out in accordance with and subject to the approved proposals.

Reason: The impacts of the proposed development must be mitigated before any development is carried out in order to ensure that there will be no adverse impacts on the New Forest and Solent Coast Nature Conservation Sites in accordance with Policy DM3 of the Local Plan Part 2 and the New Forest District Council Mitigation Strategy for European Sites Supplementary Planning Document.

Notes for inclusion on certificate:

1. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case, as the application was acceptable as submitted no specific further actions were required.

2. In discharging condition No. 9. above the Applicant is advised that appropriate mitigation is required before the development is commenced, either by agreeing to fund the Council's Mitigation Projects or otherwise providing mitigation to an equivalent standard. Further information about how this can be achieved can be found here <http://www.newforest.gov.uk/article/16478/>

Further Information:

Major Team

Telephone: 023 8028 5345 (Option 1)



New Forest
DISTRICT COUNCIL

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**Planning Development
Control Committee
January 2017**

Item No: 3d
Land of 11 & 15
Uplands Avenue
Barton on Sea
16/11527
SZ2493

Scale 1:1250

N.B. If printing this plan from
the internet, it will not be to
scale.

