



Appeal Decision

Site visit made on 6 June 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 03 July 2023

Appeal Ref: APP/X1735/W/21/3287626

9 St Albans Road, Havant, PO9 2JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Fry of Kalotec Limited against the decision of Havant Borough Council.
 - The application Ref APP/20/00470, dated 16 June 2020, was refused by notice dated 1 June 2021.
 - The development proposed is demolition of existing single storey extension and detached garage, construction of 1 no. new 2 storey dwelling house attached to the side of the existing property forming a continuation of the terrace including associated vehicular access, car parking and landscaping for both the new and existing property.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal process the Submission Havant Borough Local Plan 2036 was withdrawn. The Council is preparing a new Local Plan, but this is at an early stage and carries no weight in the decision making process. For the purposes of this appeal, the Havant Borough Core Strategy 2011 (CS) and the Havant Borough Local Plan (Allocations) 2014 (LP) form the Council's Development Plan.

Main Issues

3. The main issues are:
 - a) Whether there would be likely to be a significant effect on the internationally important features of the Chichester and Langstone Harbours Special Protection Area, in combination with other plans and projects,
 - b) The effect of the proposal on the character and appearance of the area, and
 - c) Whether the proposal would secure sufficient private outdoor garden space for the occupiers of the existing dwelling and the future occupiers of the proposed dwelling.

Reasons

Special Protection Area

4. The appeal site is within the 5.6km zone of the Chichester and Langstone Harbours Special Protection Area. The site comprises large estuarine basins that contain extensive intertidal mudflats and sandflats that support

internationally and nationally important numbers of overwintering and breeding bird species. The conservation objectives for the site are to ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive.

5. The proposal includes the provision of a new dwelling. Future occupants of the proposed dwelling are likely to place additional recreational pressure on the protected area, which may lead to disturbance of protected habitats including those of nesting birds.
6. Additionally, new residential development in the area has the potential to increase nitrogen and phosphate deposition into the protected site above consented levels. Such an increase in nutrient levels causes the dense growth of certain plants which harms the species that use the area and is thus a likely adverse effect.
7. There is no evidence before me to establish whether these effects would be significant. However, it is appropriate for me to adopt a precautionary principle. I must therefore assume that such an effect would be significant. As such the proposal is likely to have a significant effect upon the interest features of the protected site, either alone or in combination with other plans and projects. Therefore, in accordance with Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), I need to make an appropriate assessment for the site in view of its conservation objectives. As the competent authority I can only agree to the plan or project after having ascertained that it would not adversely affect the integrity of the protected site.
8. Natural England (NE) as the Statutory Nature Conservation Body was consulted by the Council before it made its decision, and again during the appeal process. NE refers to the measures that the Council has in place to mitigate against adverse effects from recreational disturbance at the protected site. Appropriate mitigation includes a financial contribution towards the Solent Mitigation Recreation Strategy. On the basis that a sufficient financial contribution is secured, NE is satisfied that the potential recreational impacts arising from the proposal can be sufficiently mitigated against.
9. As to water quality, nutrient neutrality cannot be achieved on site. A payment can however be made to an off site scheme which changes the use of an existing site called Warblington Farm in a phased manner from a dairy farm to a nature reserve, as secured by the Council's Mitigation Plan for Nutrient Neutral Development 2020. The Council confirms that there is sufficient capacity within its mitigation scheme for the proposal and that the financial contribution suggested is sufficient. Warblington Farm is suitable for sites that drain into the Budds Farm and Thornham Wastewater Treatment Works, which the proposed dwelling would. NE is content with this proposed solution.
10. Two Unilateral Undertakings (UUs) are before me. The Council has confirmed that the financial contributions set out in both are sufficient. However, the copies of the UUs that are before me are redacted insofar as I am unable to confirm that they are correctly signed. Furthermore, neither refer to the appeal proposal. Therefore, the proposed mitigation cannot be secured, and I am unable to conclude that adverse effects on the integrity of the site can be avoided.

11. The proposal would therefore be likely to have a significant effect on the integrity of the European site having regard to its conservation objectives, either alone or in combination with other developments. It would therefore not accord with the Habitats Regulations or Policy DM24 of the LP, which states that development proposals will be granted where a likely significant effect on a Special Protection Area is avoided or mitigated against.

Character and appearance

12. The appeal site is located in a residential area that is characterised by similar mid 20th century dwellings. The dwellings are arranged in terraced blocks, however the development is not rigidly planned as is typical of mass built housing of this period; in this regard some terraces step forward of others, and the gaps around buildings at road junctions are not consistent.
13. This can be said of the appeal property and the dwelling opposite, No. 7 St Albans Road. The gable end of No. 7 almost aligns with the front elevation of No. 1 Dunhurst Close to its rear, whereas the original gable end of the appeal building stands significantly further back from its corresponding neighbour, No. 32 Dunhurst Close.
14. When looking down the length of Dunhurst Close towards the junction in an easterly direction, the proposal would bring the gable end of the existing terrace forward in a manner that would relate comfortably to the existing position of the gable end of No. 7 St Albans Road. I accept that the extended terrace would step forward of No. 32 Dunhurst Close and as a result the relationship between the two sides of the junction would be offset. However, this would be similar to the current arrangement where the end gable of one of the dwellings stands much closer to the road than the other. Furthermore, in the context of a housing development where terraces are not rigidly aligned, the proposed overstep would not appear out of place.
15. A reasonable depth of side garden would be retained, which would continue to respect the spacious appearance of the road junction and provide some visual relief to the terraced blocks.
16. In summary, the proposal would not harm the character or appearance of the area. It would accord with Policies CS9 and CS16 of the CS, which together seek to ensure that development proposals respect local character and built form, and is designed to a high standard.

Living conditions

17. The occupiers of the existing dwelling enjoy a spacious corner plot. Whilst the rear garden is not particularly deep, it opens out to the side and is currently enclosed by a substantial hedge boundary to form a good sized private garden.
18. This area would be significantly reduced by the proposal. The existing dwelling would be served by a much smaller enclosed garden at the rear, and would retain a portion of the existing front garden.
19. The proposed dwelling would have a similarly sized enclosed rear garden. It would also have use of the remaining side garden and a portion of the existing front garden.

20. The Council refers to the suggestion in the Havant Borough Design Guide Supplementary Planning Document 2011 (SPD) that the garden of a two storey home should be a minimum of 10 metres in length. Neither of the proposed rear gardens would comply with this figure. The garden that would serve the existing dwelling would be 9 metres long, and the garden for the new dwelling would be 8 metres long.
21. The proposal would therefore not accord with the guidance in the SPD. However, both areas would relate well to the corresponding dwellings, with openings from the living rooms to give direct access into the gardens. They would be well proportioned, and sufficiently sized to provide a private outdoor space that could be used for a variety of purposes to support the physical and mental health and wellbeing of the future occupants of both dwellings. Both dwellings would also benefit from additional space provided by sizeable front gardens owing to the set back of the terrace, and the new dwelling would have an area of garden to the side. Although these would not be as private as the rear gardens, they could still be put to a use that would be beneficial to the occupants of the dwellings such as for the growing of plants.
22. Furthermore, I note that the aim of the SPD guidance is to provide appropriate daylight and minimise overlooking. The gardens would be to the west of the dwellings and unobstructed to the south, thus receiving good levels of daylight and direct sunlight. In terms of overlooking, the Council is satisfied that the proposed relationship would be acceptable, and I can see no reason to take a contrary view. The proposed rear gardens would therefore accord with the reasons for the minimum dimension suggested in the SPD.
23. In summary, the proposal would secure sufficient private outdoor garden space for the occupiers of the existing dwelling and the future occupiers of the proposed dwelling. It would accord with Policy CS16 of the CS, which seeks to ensure that development proposals are designed to a high standard to create places where people want to live, work and relax.

Other Matters

24. The Council is unable to demonstrate a five year supply of deliverable housing sites (5YHLS). As such the 'tilted balance' set out at paragraph 11d) of the National Planning Policy Framework (Framework) is engaged. In this context, where the policies are out of date, which would be the case where a Council cannot demonstrate a 5YHLS, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
25. However, paragraph d) i. provides an exception where policies in the Framework that protect assets of particular importance provide a clear reason for refusing the proposal. Footnote 7 establishes that this includes habitats sites. Consequently, with reference to my findings on the first main issue of this decision, the 'tilted balance' is not engaged.

Conclusion

26. In conclusion, although I have found that the proposal would not cause harm to the character or appearance of the area and would provide sufficient outdoor amenity space, these are not matters that can outweigh my findings in relation to the first main issue. The proposal would conflict with the Habitats

Regulations and the development plan and there are no other considerations that outweigh this conflict. Therefore, the appeal should be dismissed.

A Tucker

INSPECTOR