



Appeal Decision

Site visit made on 12 March 2019

by Robert Mellor BSc (EstMan) DipTRP Dip DesBEnv DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2019

Appeal Ref: APP/X1735/W/18/3202960

50 Silvester Road, Waterlooville, Hampshire PO8 8TL

- 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 P Rex against the decision of Havant Borough Council.
 - The application Ref APP/17/01121, dated 7 February 2018, was refused by notice dated 29 March 2018.
 - The description of the proposed development was revised during the application and appeared in the decision notice and appeal form as: *'Demolition of existing outbuildings and conservatory, construction of 1 No. 3 bed detached bungalow with associated car port, revised drive and landscaping'*.
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DECISION

1. The appeal is dismissed.

PROCEDURAL MATTERS

2. The appeal has been determined on the basis of the above revised description and the revised red line defining the application site which excluded the ditch along the northern boundary.

MAIN ISSUES

3. Planning permission was refused because of a claimed adverse effect on the amenity of neighbouring occupiers.
4. Following the decision and having regard to the provisions of the Habitat Regulations¹, the Council has also pointed to a failure to secure mitigation for an adverse effect on coastal Special Protection Areas (SPA) from additional recreational pressure created by residential development.
5. During consultation on a draft Appropriate Assessment of the effect on the SPAs and proposed mitigation of recreational pressures, Natural England (the Statutory Nature Conservation Body) raised a further issue concerning a likely significant effect of additional residential development on water quality.
6. I therefore now consider the main issues to be: the effect of the development on the living conditions of neighbouring occupiers with particular regard to privacy and to noise and disturbance from vehicle movements; and the effect on ecology and bio-diversity.

¹ Conservation of Habitats and Species Regulations (England and Wales) 2017 (as amended)

REASONS

Living Conditions

7. The proposal would include the demolition of an existing single garage serving No 50 Silvester Road and the extension of the existing driveway beyond that garage to provide vehicular and pedestrian access to the proposed bungalow on a backland site within the present rear garden of No 50.
8. Policy CS16 of the Havant Borough Core strategy 2011 provides, amongst other things, that development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.
9. Following the demolition of the existing garage the extended driveway would pass close to the boundary with the neighbouring semi-detached house at 48a Silvester Road. The two-storey flank elevation of that house stands about 1m from the boundary which is marked by a wooden fence. There is a half-glazed door at ground floor level which appears to be unused as there is shelving across it. The window has obscure glazing. There is a further obscure glazed window at first floor level which may serve a bathroom. Attached at the rear of the house is a fully-glazed full-width conservatory. The conservatory has clear glazing to all sides. The side facing the appeal property had drawn blinds at the time of my visit.
10. As the appeal proposal is for a low-set bungalow, sited well to the rear of the frontage properties in Silvester Road, I do not consider that there would be significant overlooking between windows or unacceptable standards of privacy. Suitable privacy between gardens can be provided by fencing, including in relation to the Kings Road properties at the rear.
11. The submitted drawing indicates an opportunity for screen planting adjacent to part of the boundary with No 48a which could provide enhanced mutual privacy. That would include tree planting. The trees would need to be at least 3m from the edge of the sewer that crosses the site. That may limit the northern extent of the planting but would not prevent screen planting where it would have the most effect. The precise location of that planting could be determined by condition were the appeal to be allowed.
12. In 1990 an appeal (ref T/APP/X1735/A/89/143949) was dismissed in respect of a proposal to erect a dwelling house and 2 double garages on approximately the same site as the current appeal site and with a shared driveway in a similar position. One of those double garages would have served the appeal dwelling and the other would have served the retained dwelling at No 50. Thus, the driveway would have carried the traffic for two properties. The disturbance created by those movements was one of the reasons for the dismissal of that appeal.
13. In the current proposal the driveway would again pass between the flank elevations and rear gardens of Nos 50 and 48a to reach the proposed car port near to the long rear garden at No 52a. However, the driveway would thus only carry the traffic for the single new dwelling. There would be parking for the retained dwelling at No 50 at the front of that property adjacent to the street where there are already many vehicle movements. That would result in

materially reduced movements along the driveway adjacent to the boundary by comparison with the dismissed 1990 appeal scheme.

14. It is not unusual in a suburban road for a driveway to a single dwelling to pass close to a neighbouring dwelling or its garden. Whilst there would be some additional brief noise from vehicle movements and possible fleeting disturbance by headlights at night, I do not consider that this would here result in unacceptable harm to the amenity of neighbouring occupiers at Nos 48a, 50 or 52a. The latter property has a long rear garden and the car port would only adjoin a short length of the boundary. Neither would there be unacceptable harm to the privacy of the neighbours. The proposal therefore accords with CS Policy CS16.

Consistency

15. The Appellant points out that the Council has recently granted permission nearby for a backland development of two dwellings with a shared access drive passing between (and close to) between Nos 78 and 80 Silvester Road (Council ref. APP/17/00530). In that case both of those existing dwellings have main windows directly facing that access. There would be more traffic movements along that drive than in the present case.
16. That arrangement was considered acceptable by the Council on the basis that the two frontage dwellings were controlled by the same developer and were included in the application site. Nevertheless, the Council must have concluded that the public interest would be served in that acceptable living conditions would be created for future occupiers of those frontage dwellings, notwithstanding the greater number of movements and the proximity of the facing windows to vehicle movements. It follows that a lesser degree of movement in the present case would also result in acceptable living conditions and that the development would be consistent with that recent decision by the Council in that regard.

Ecology and Biodiversity (including Appropriate Assessment)

17. A previous Appropriate Assessment of the Council's Allocations Plan had concluded that any net increase in residential development in the area would have a likely significant effect on the Solent SPAs that would require mitigation.
18. Since the subject planning permission was refused in March 2018, a ruling of the European Court of Justice in the case of *People Over Wind, Peter Sweetman v Coillte Teoranta* concluded that an Appropriate Assessment is required when a proposal would result (alone or in combination with other development) in a likely significant effect on a European Site such as a Special Protection Area before taking account of any proposed mitigation.
19. Whilst there are several international nature conservation designations around the Solent, the most proximate to the appeal site is the Chichester and Langstone Harbours SPA. The site conservation objectives of the SPA are to maintain or restore the populations of the qualifying features (over-wintering birds) and to maintain or restore the distribution of the qualifying features within the site.

Recreational Pressures

20. CS Policy DM24 provides in summary that planning permission will be granted for development that avoids or mitigates a likely significant effect on Special Protection Areas (SPA) caused by recreational disturbance and that necessary mitigation can be provided by measures which may include a financial contribution.
21. Because the proposed development would, in combination with others, accommodate significantly more people in the area, there is likely to be increased demand for recreational activities. The Chichester and Langstone Harbours SPA in particular would be an attractive destination for activities such as dog-walking with the potential to disturb the over-wintering birds and their habitat which are qualifying features of the SPA. In the terms of the Habitats Regulations there is thus an identifiable pathway of effect and a likely significant effect on the qualifying features, as also recognised by Policy DM24.
22. Mitigation is nevertheless available for these recreational impacts in the form of the Solent Mitigation Strategy which aims to prevent disturbance from recreational activities by measures which include: the employment of coastal rangers; education initiatives; measures to encourage responsible dog-walking; codes of conduct for coastal activities; site-specific projects to better manage visitors and provide secure habitats for birds; the provision of new or enhanced greenspaces as an alternative to visiting the coast; and coordination of the above activities. Implementation is to be funded by contributions based on the number of bedrooms in new properties.
23. The Appellant has already paid the requested financial contribution to Havant Borough Council which is part of a partnership supporting this strategy and I have no reason to doubt that it will be used for the stated mitigation purposes. On that basis I conclude that the recreation mitigation would prevent associated harm from recreational pressures generated by the development to the integrity of the qualifying features of the Chichester and Langstone Harbours SPA (and also avoid any harm to the other protected areas covered by the same strategy that are more remote from the site). The development would therefore accord with Policy DM24 in that regard.

Water Quality

24. Natural England advises that there are high levels of nitrogen and phosphorus input to the water environment of the Solent region caused by wastewater from existing housing and from agricultural sources and that these nutrients are causing eutrophication at the designated nature conservation sites which include the Chichester and Langstone Harbours SPA. This results in dense mats of green algae that are impacting on the Solent's protected habitats and bird species.
25. Natural England further advises that there is uncertainty as to whether new housing growth will further deteriorate designated sites. Work on this issue is on-going with the local planning authorities, the Environment Agency and the water companies. That may lead to identified mitigation measures in the future. However, no mitigation strategy has yet been developed and no interim approach has yet been set up by Havant Borough Council, although it is being progressed. In the meantime, Natural England advises that one way to

address the uncertainty is to achieve nutrient neutrality whereby an individual scheme would not add to nutrient burdens.

26. In the present case, Havant Borough Council has calculated that the wastewater total nitrogen load arising from the planned development of a single dwelling within the existing garden would be 0.99576563 Kg/TN/year.
27. As a redevelopment of existing urban land there would be none of the mitigation that might be expected from a reduction in the nitrogen local from developing agricultural land. The proposed development would not be nutrient neutral. Natural England concludes that it is not possible to ascertain that the proposal will not result in adverse effects on the site's integrity and that the proposal does not provide enough information and/or certainty to enable adverse effects on site integrity to be ruled out.
28. In these circumstances the Regulations provide that planning permission can only be granted if the proposal meets the following tests:
 - there are no alternative solutions to the proposed development;
 - there are imperative reasons of overriding public interest; and
 - there are suitable compensatory measures secured (for example a replacement habitat).
29. On the evidence before me I conclude that none of these tests are satisfied and that the appeal must therefore be dismissed on the grounds of the uncertain but likely adverse effects of waste water from this development, in combination with other developments, on the site integrity of the Chichester and Langstone Harbours SPA and other similarly protected areas around the Solent.
30. I understand that the position is similar in respect of numerous other current development proposals in South Hampshire. It possible that an appropriate mitigation strategy may be developed at a future date, but that possibility would not be an adequate basis to support the granting of planning permission at the present time.

Conclusions

31. I have taken account of all other representations. In particular I acknowledge that the proposal would have the social and economic benefits of providing an additional dwelling. However, having regard to the provisions of the Regulations, that is not sufficient to override the likely environmental harm of the development in combination with other residential development in the wider area.

Robert Mellor

INSPECTOR