The Planning Inspectorate

Appeal Decision

Site visit made on 21 November 2011

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 December 2011

Appeal Ref: APP/X1735/A/11/2155820
100 Jubilee Road, Waterlooville, Hampshire PO7 7RE

- 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 D Gould against the decision of Havant Borough Council.
- The application Ref APP/11/00151, dated 6 February 2011, was refused by notice dated 11 April 2011.
- The development proposed is a new bungalow and garage.

Decision

1. The appeal is dismissed.

Main issues

2. The main issues are

   (a) the effect that the proposed development would have upon living conditions at (1) Nos. 100 and 102 Jubilee Road, with particular regard to any increase in noise and disturbance, and (ii) No. 104 Jubilee Road, with particular regard to visual impact;

   (b) the impact that the proposal would have upon the health and longevity of the nearby oak tree in the Waterlooville recreation ground; and

   (c) whether the proposed development would generate a need to make a financial contribution toward local transport infrastructure.

Reasons

Living conditions

3. The proposal would involve the creation of an access drive to serve the new dwelling, running between Nos. 100 and 102. No. 102 already has a rear garden that is small in comparison with most neighbouring properties, and as a result of the proposed development, No. 100 would be left with one even smaller than this. A garage would be provided alongside the rear boundary of No. 100, and a parking space alongside the rear boundary of No. 102. As a result, vehicles driving to and from the proposed bungalow would pass very close to the flank walls of both existing dwellings, and alongside the full length of both rear gardens, before manoeuvring to park alongside their rear boundaries. This would significantly increase the levels of noise and disturbance currently experienced by the occupiers of Nos. 100 and 102.

4. I note that a 1.8m timber panel fence would be installed along both sides of the new access and along the boundaries with neighbouring dwellings, but no

details of the appearance of this proposed 'acoustic' fence, or the level of sound reduction it would achieve, have been provided. I am not convinced that a 1.8m timber panel fence would provide sufficient protection from the noise of vehicles in close proximity, while a timber fence of the necessary height, opacity and solidity to function as an effective noise barrier would be likely to induce an oppressive feeling of enclosure in these small gardens.

5. On that basis, I consider it likely that the proposed development would cause unacceptable harm to living conditions at Nos. 100 and 102. While I appreciate that the current occupiers of No. 100 have not raised any objection to the proposed development, there can be no guarantee that future occupiers would find the situation acceptable.

6. The proposed bungalow would lie some 1.5m from the boundary with No. 104 at its closest point, and 4.5m at its farthest point. The garden of No. 104 tapers to the rear, and the dwelling at this property is set a considerable distance into its plot, such that it would have only a limited separation distance from the new bungalow. While the replacement boundary fence would provide some screening, the new single-storey dwelling would be prominent in views from the rear garden and rear-facing windows of No. 104. I consider that in this location, the mass and bulk of the proposed new dwelling would appear conspicuous and overbearing to occupiers of No. 104, and would result in significant harm to the outlook from that property.

7. Taking all of this into account, I conclude that the proposed development would fail to meet the objectives of Policy CS16 of the Havant Borough Core Strategy (2011), which seeks among other things to ensure that new development does not cause unacceptable harm to the amenity of neighbours through noise or loss of outlook.

The impact upon the oak tree

8. The undisputed evidence of the professional Arboricultural Impact Appraisal submitted by the appellant is that the nearby oak tree, growing in Waterlooville recreation ground a few metres from the boundary of the appeal site, is a mature and healthy specimen capable of contributing to the amenity of the area for at least another 50 years. Part of the canopy of this tree overhangs, and its root protection area extends into, the appeal site.

9. I understand that the siting and orientation of the new bungalow has been designed partly to minimise its impact upon neighbouring dwellings, and partly to minimise its interference with the root protection area of this valuable tree. I also note that pile and shallow beam foundations would be used, in order to reduce the impact that construction work would have upon the tree. However, the position that the dwelling would occupy within its plot would mean that a large part of its main garden space would lie beneath the canopy of the oak tree, and that the amount of light reaching windows in its north-eastern elevation would be limited by the presence of the tree.

10. I share the Council's concern that it is highly likely future occupiers of the proposed dwelling would seek to increase their useable garden space, to reduce the risk posed by falling debris and to maximise light penetration, by requesting either the removal of the tree or a substantial reduction of its canopy. Such requests, justified by the significant improvement in living conditions they could achieve, would be difficult for the Council to resist.

11. I find that while the construction of the proposed dwelling would not necessarily cause any immediate damage to the tree, its long term preservation would be put at risk by the needs of future occupiers of the bungalow. The proposed development would therefore conflict with the objectives of Policy DM8 of the Core Strategy, which seeks to ensure that new development does not compromise the continuing survival of existing natural features which are important to local amenity.

The transport infrastructure contribution

12. The Council's third reason for refusal concerned the absence of arrangements to secure a financial contribution towards local transport infrastructure.

13. The evidence of the Council is that the requested financial contribution would be put towards the provision of cycle facilities in the local area. I am told that the intention of the Council is eventually to link up what may at present be individual lengths of cycle routes into a coherent pattern, forming a core cycle network across the Borough. Such a network would undoubtedly benefit the Borough's occupiers, including occupiers of the proposed development.

14. However, Circular 05/2005 explains that planning obligations must be directly, fairly and reasonably related to the proposed development, and necessary to make it acceptable in planning terms; these requirements are given statutory force by Regulation 122 of the Community Infrastructure Levy Regulations 2010/948. Financial contributions should not, then, be used to secure improvements or enhancements intended to benefit local residents as a whole, but simply to secure necessary mitigation to offset the impact of a particular development proposal. It is not clear to me, from the evidence provided, what specific cycle facilities would be needed as a direct result of the currently proposed development, or why their provision would be necessary to make the new bungalow acceptable in planning terms.

15. I have not, then, been provided with sufficient evidence to conclude that in this particular case, the financial contribution sought by the Council would be fairly, reasonably and directly related to the proposed development, or necessary to make it acceptable in planning terms. The appellant's failure to provide a financial contribution toward local transport infrastructure is not, therefore, a reason to refuse to grant planning permission for the proposed development.

Conclusion

16. I have had regard to the contribution the new dwelling would make to improving the supply of housing in the Borough, and the possibility that it would improve security for other nearby houses with gardens that back on to the recreation ground. However, neither these nor any other material considerations are sufficient to outweigh the harm that the proposed development would cause to living conditions at neighbouring properties, and its adverse implications for the long-term retention of the oak tree in the adjoining recreation ground. I determine that the appeal should be dismissed.

Jessica Graham

INSPECTOR