
Appeal Decisions

Site visit made on 3 January 2018

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 17 January 2018

Appeal A

Ref: APP/B9506/D/17/3186318

Saughtrees, Hatchet Green, Hale SP6 2NB

- 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 A McGibbon against the decision of New Forest National Park Authority.
 - The application Ref 17/00278, dated 30 March 2017, was refused by notice dated 18 July 2017.
 - The development proposed is re-alignment of driveway and new double garage.
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Appeal B

Ref: APP/B9506/D/17/3186321

Saughtrees, Hatchet Green, Hale SP6 2NB

- 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 A McGibbon against the decision of New Forest National Park Authority.
 - The application Ref 17/00277, dated 30 March 2017, was refused by notice dated 18 July 2017.
 - The development proposed is construction of tennis court and associated landscaping works.
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Decisions

Appeal A

1. The appeal is dismissed insofar as it relates to the re-alignment of driveway. The appeal is allowed insofar as it relates to new double garage and planning permission is granted for new double garage at Saughtrees, Hatchet Green, Hale SP6 2NB in accordance with the terms of the application, Ref 17/00278, dated 30 March 2017, and subject to the conditions in the Schedule to this decision.

Appeal B

2. The appeal is dismissed.

Procedural matters

3. These two appeals relate to the same property. If Appeal B (for the tennis court) were to be allowed alone this would prevent direct vehicular access to the dwelling, although there would remain an open area of hardstanding for

parking at the upper end of the driveway, and a separate pedestrian route via a bridge to the dwelling. The appellant has made clear that if either appeal were to be allowed the existing access drive beyond the hardstanding area would be removed. I will consider the appeals on this basis. Each case, however, needs to be considered on its individual merits.

4. In respect of Appeal A there are two drawings numbered 5656-03-AC-003 Rev A, one described as "Section A-A", and the other "Driveway/Garage Section". I have used both, but have differentiated between them in the relevant condition.
5. Various comments have been made as to whether the proposed tennis court and access drive would fall within the curtilage of the dwelling or that land used incidental to the enjoyment of the dwellinghouse as such. This appeal is not the appropriate mechanism to determine that, and I will consider the appeal based on the representations made and what I saw on site.

Main Issues

6. Both applications were refused for two similar reasons. The main issues in each case are:
 - whether the proposals would preserve or enhance the character or appearance of the Western Escarpment Conservation Area (WECA); and
 - the effects on ecology.

Reasons

7. The appeal site lies within the New Forest National Park and within the WECA. The National Park Authority has published the WECA Character Appraisal (the Appraisal). The Appraisal has identified a number of key characteristics which describe the significance of the WECA and a number of character areas within the overall WECA. The appeal site lies in the Hatchet Green character area which is noted in the Appraisal as representing eighteenth and nineteenth century commonland encroachment on this northwest edge of the New Forest. The appeal site lies some way distant from the main area of dwellings although the access driveway exits at the green.
8. Saughtrees is a detached, relatively modern, two storey dwelling. The property is located on a sloping site, although it would appear that the dwelling has been constructed on a terrace as it appears to be 'cut-in' to a bank and the area to the south is flatter than the prevailing landform.
9. Vehicular access is currently obtained from the northeast, firstly jointly with a bridleway and then diverging and falling across the slope around the west of the dwelling and approaching to an area of hardstanding in front and to the eastern side of the house.
10. The appeal site lies within the Hatchet Copse, an area of deciduous woodland designated as a Site of Importance for Nature Conservation (SINC) by Hampshire County Council by virtue of its importance as a significant area of native woodland. This habitat, it is asserted by the Authority, is likely to comprise lowland mixed deciduous woodland which is listed by the Government as a habitat of principal importance for biodiversity. This assertion is not disputed by the appellant, and I have no reason to disagree with this.

11. The appeal applications were accompanied by a Phase 1 Biodiversity Survey (the Survey) with surveys carried out in December 2016 and January 2017.

Appeal A

Conservation Area

12. The proposal is to construct a double garage with pitched roof to the north and east of the existing house with this being dug into the bank and a small retaining wall created. A new access drive would be created to the east cutting through the steep bank to the existing area of hardstanding. This would require the felling of a number of trees and the removal of a section of undergrowth. The Authority's main concerns with the loss of this undergrowth relate to the effects on ecology which I will consider below.
13. The trees have been the subject of an Arboricultural Assessment and Method Statement (the Statement) pursuant to British Standard BS 5837:2012 *Trees in relation to design, demolition and construction – Recommendations* (the BS). This indicates that two of the trees to be felled are within category "B" (trees of a moderate quality with an estimated life expectancy of at least 20 years), and one tree and two groups of trees are within category "C" (trees of a low quality with an estimated life expectancy of at least 10 years or young trees) as defined in the BS. The two "B" category trees are a cypress and a tulip tree.
14. The construction of the new access drive would involve significant engineering works into the landform. The Authority has expressed concerns about the surfacing and edging of the new drive considering that those shown on the application drawings would be of themselves intrusive. I am satisfied that appropriate surfacing and boundary materials could be delivered by use of an appropriately worded planning condition to avoid these adverse effects.
15. The effects of the new drive would be harmful to the character and appearance of the area but only over a relatively small area. Provided the existing access drive were to be removed beyond the existing hardstanding area and the land restored then I am satisfied that, overall, the character and appearance, and thus the significance, of the WECA as a whole would be preserved. Special attention should be given to this.
16. While the loss of the trees is to be regretted neither of the category "B" trees is a native species to the New Forest and their replacement would ensure that the overall wooded landscape setting of the dwelling would remain and be enhanced by planting of native species; this could also be secured by planning condition. I am therefore satisfied that the landscape and scenic beauty of the National Park would be conserved, and great weight should be given to this in line with paragraph 115 of the National Planning Policy Framework (the Framework).
17. The new garage would be located in very close proximity to the dwelling and would be largely obscured by the bank to the north and the dwelling to south and west or set against the dwelling. It would be seen within the close context of the dwelling and would preserve the character and appearance of the WECA.
18. The Authority is concerned that the proposal would individually or cumulatively erode the National Park's local character. For the reasons explained above I do not believe that this would be case but it is only through the balancing of the

harm of the new driveway with the benefits of the removal of the existing driveway that I have concluded that the effects on the WECA are acceptable.

19. As such the proposal would preserve the character and appearance of the WECA. It would therefore comply with Policies DP1 and CP8 of the New Forest National Park Core Strategy (the CS) which require that development respects the natural and built environment and landscape character, and would not erode the National Park's local character or result in a gradual suburbanising effect. It would also comply with paragraphs 115 and 132 of the Framework as set out above, and as it would conserve the significance of the WECA to which great weight should be given.

Ecology

20. The construction of the access drive would involve clearing an area of scrub woodland, consisting mainly of birch saplings with a dense growth of bramble. The Authority is concerned that because of the time of the year that the surveys were undertaken it was not possible to ascertain whether ecology would be adversely affected.
21. Indeed, the Survey, specifically states "... the route of the proposed access drive was covered with low open scrub which could have provided some excellent habitat for the four common species of reptiles. No specific survey was carried out for these species due to the time of year when they would have been hibernating and therefore not visible." In addition, there was evidence of Dormice activity in the area from 1993, but this was around 140 m from the site of the proposed development.
22. Paragraph 118 of the Framework indicates that in determining planning applications the aim should be to conserve and enhance biodiversity by applying various principles. Included within these is that if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for then planning permission should be refused. Paragraph 115 of the Framework indicates that the conservation of wildlife heritage is an important consideration in National Parks and should be given great weight.
23. However, without recent and, in this context, up-to-date surveys to ascertain whether protected species are present it is not possible to be certain that biodiversity would be conserved or enhanced, and whether any of the three options (avoidance, mitigation or compensation) would be necessary. In my view, it is not sufficient to seek to resolve this issue by taking appropriate mitigation measures during construction as it is not possible to define "appropriate" with sufficient precision, particularly as this area could provide an "excellent habitat".
24. However, the amount of bank to be removed to construct the proposed garage would not encroach into this area in any meaningful way to reduce the ecological importance of the area. I am therefore satisfied that the garage, of itself, would not have a harmful effect on matters of ecological importance.
25. As such the driveway element of the proposal would not make adequate provision for ecology. As such it would be contrary to Policy CP2 of the CS in that it would not protect locally important sites and features of the natural

environment. It would also be contrary to paragraphs 115 and 118 of the Framework as set out above.

Other matter

26. The appellant has referred to the effect of the designation of the SINC on the use of the land as a dwelling. In making my decision I have looked at the particular effects of that designation and weighed them in the public interest. I do not believe that this interference is disproportionate given the importance of ecology in the public interest.

Conclusion on Appeal A

27. Although the access drive would not be harmful to the WECA if balanced by the removal and restoration of the existing access drive there is insufficient information to be appropriately satisfied that the driveway would not give rise to harm to ecology and thus not be harmful to the special qualities of the National Park. The access drive element should, therefore be dismissed. However, the introduction of the garage building, which could be accessed by the existing drive, would preserve the character and appearance of the WECA and it would not have a harmful effect on matters of ecological importance. It would therefore conserve the special qualities of the National Park. As such a split decision is appropriate dismissing the appeal in respect of the access drive, but allowing the appeal in respect of the garage.

Appeal B

Conservation Area

28. The proposed tennis court would be located to the west of the main house. The area is currently crossed by the access drive and the site slopes significantly across what would be the length of the tennis court. The proposal would have the one end dug-into the landform at the northern end by some 2.6 m and raised up at the other by some 0.82 m. The whole would be surrounded by a fence and an existing outbuilding converted into a tennis pavilion. The precise height of the fence is not set out on the drawings, but it would be taller than the amount the proposed court would be dug-into the landform at its northern end.
29. At present the area of the proposed tennis court appears part of the overall area of the Forest, with no clear division between the area adjacent and part of the environs of the dwelling and the area beyond. The existing outbuilding appears separate from the dwelling and the proposed tennis court would be beyond and extend further than the western extent of the existing access drive.
30. The introduction of the tennis court and its fence would appear as an intrusive and harmful element into the landscape character of the area, detracting from the landscape and scenic beauty of this part of the National Park, due to its stark and man-made regular appearance. It would also be harmful to the character and appearance of the WECA for the same reasons. As set out above, special attention should be given to this.
31. As set out above the site is by-passed to the north by a bridleway. I walked along this at the site visit in both directions. While I appreciate that I saw the site at its most obvious, due to the lack of vegetation in winter, the proposed

site of the tennis court would be clearly visible from the right of way, detracting from scenic beauty.

32. I note that the proposal involves the introduction of additional planting in the area between the tennis court and the bridleway and the removal of the existing access drive, but either or both of these would not successfully mitigate the effect of the proposal on the wider landscape, and, in any event, however, desirable additional landscaping might be, it does not make the unacceptable acceptable.
33. Consequently, the proposal for the tennis court would not preserve or enhance the character or appearance of the WECA and the special qualities of the National Park. As such it would be contrary to Policies DP1 and CP8 of the CS and paragraphs 115 and 132 of the Framework, all as set out above.

Ecology

34. Again the Authority objects to the proposal on the basis of the lack of information on ecology matters. However, while the area falls within the area covered by SINC designation the area of the proposed tennis court is somewhat different from the area of the proposed access drive, being the hardsurface of the access drive, an area of tightly mown grass, an area of concrete around the outbuilding, and a very small area on the edge of the woodland, which is mostly given to grass as an understorey.
35. The Authority does not refer to this area being particularly ecologically sensitive; it is not like the area where the access road is proposed with a high suitability for reptiles or other species.
36. I am therefore satisfied that there is sufficient information within the Survey to assess the effects on ecology and that with suitable mitigation, as proposed, that the construction of a tennis court in this location would not be harmful to ecological interests. As such the proposal would comply with Policy CP2 of the CS and paragraphs 115 and 118 of the Framework as set out above.

Other matter

37. The appellant has indicated that he considers he has a fall-back position whereby he could construct a tennis court within the curtilage of the dwelling. However, this has not been demonstrated, either in form or location, and I am not satisfied that this would actually be achievable. As such I am unable to give this anything but very limited weight and it does not alter my overall conclusion.

Conclusion on Appeal B

38. While I am satisfied that the proposed tennis court would not have an adverse effect on ecology it would not preserve or enhance the character or appearance of the WECA and would thus be harmful to the special qualities of the National Park. As such the appeal should be dismissed.

Conditions

39. In respect of the garage element of Appeal A I have considered the conditions put forward by the Authority against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale

condition, I have imposed a condition specifying the relevant drawings as this provides certainty.

40. I have also imposed a condition requiring the external materials of the garage to match the existing dwelling to ensure that the character and appearance of the WECA and the special qualities of the National Park is preserved. I do not believe a condition showing the levels of the garage is necessary as this is clearly shown on the plans.
41. In order to protect the scenic beauty of the National Park the development should take place in accordance with the Statement; I can see no need for this to be revised. As the garage of itself would not adversely affect matters of ecological importance I can see no need for further details to be submitted. As the permission will only relate to the garage, I can see no need for a condition preventing external lighting.
42. In line with Policies DP11 and DP12 of the CS a condition is necessary to ensure that the garage is not used as habitable accommodation in order to protect the National Park.
43. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusions

44. For the reasons given above I conclude that Appeal A should be allowed in part and dismissed in part, and that Appeal B should be dismissed.

RJ Jackson

INSPECTOR

SCHEDULE OF CONDITIONS – APPEAL A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans so far as relevant to that part of the development hereby permitted: 01, 5656-03-AC-001 Rev A, 16125-BT4, 5656-03-AC-002 Rev A, 5656-03-AC-003 Rev A (Section A-A), 5656-03-AC-003 Rev A (Driveway/Garage Section), 5656-03-AC-04, 5656-03-AC-05, 5656-03-AC-006.
- 3) The materials for the external surfaces of the development hereby permitted shall match those used on the main house.
- 4) The development hereby permitted shall take place in accordance, so far as relevant to that part of the development hereby permitted, with the barrell tree consultancy Arboricultural Assessment & Method Statement reference 16126-AA4-DC dated 28 March 2017.
- 5) The building the subject of this permission shall only be used for purposes incidental to the dwelling on the site and shall not be used for habitable accommodation such as kitchens, living rooms and bedrooms.

END OF SCHEDULE