
Appeal Decision

Site visit made on 4 September 2018

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 October 2018

Appeal Ref: APP/B9506/W/18/3198225

Inchcolm, North Road, Brockenhurst SO42 7RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr S Tizzard against the decision of New Forest National Park Authority.
 - The application Ref 17/00529, dated 16 June 2017, was refused by notice dated 20 September 2017.
 - The development proposed is an outline application (with access for consideration) for the erection of 4 residential properties following the demolition of the existing property. Revised scheme following the withdrawal of application 17/00274.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application has been made in outline for approval of access, with matters of layout, scale, appearance and landscaping reserved.
3. The plans upon which the Council's decision was based are marked 'indicative', and I have considered details the layout, appearance, landscaping and scale of the development solely on this basis.
4. The appellant submitted revised plans prior to determination of the application and has requested that plans be used to determine the appeal. However these plans were not used by the Council in making its decision, and have not been subject to any public consultation. Furthermore they appear to simply show that alternative building designs would be possible, which is necessarily the case where all matters related to building design are reserved for future approval. As such I have based my decision on the plans the Council used to determine the planning application but consider that this has not prejudiced the appellant.
5. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeal. The parties have been given the opportunity to comment on the implications of this on the appeal, and I have also taken it into account in reaching my decision.

Main Issues

6. The main issues are the effect the proposed development would have on:
 - bats;

- the character and appearance of the area including the setting of Brockenhurst Conservation Area (the conservation area); and,
- the living conditions of neighbours, with particular regard to overlooking of new units on the September Cottage site.

Reasons

Bats

7. Bats are a protected species under the Wildlife and Countryside Act 1981, and a European Protected Species (EPS) under the Conservation of Habitats and Species Regulations 2017 (the HSR). A preliminary 'phase 1' bat survey report was submitted with the planning application, which contained details of work at the site undertaken by a consultant ecologist during April 2017. This recommended that a more detailed 'phase 2' survey should be undertaken. Whilst no further details of survey work were submitted with the appeal, the report itself is now out of date.
8. In light of this the views of each the parties were sought during the appeal process. In response the appellant submitted a phase 2 bat survey report dated June 2018 (2018 report) which was prepared in relation to separate scheme of development on the site prepared following refusal of the appeal scheme.
9. The survey confirms presence of a day roost of Pipistrelle bats within the existing building on site, foraging and commuting across the site and an episode of swarming behaviour. With regard to the impact of the development proposed, it accordingly sets out a range of mitigation measures. The development in question differs from the appeal scheme as it shows 3 rather than 4 dwellings on the site.
10. Though the mitigation measures identified appear somewhat generic and reactive in nature, it is reasonable to consider that the greater density of development proposed in the appeal scheme, and associated constraints this would place on layout, open space and landscaping, would have a bearing on the type and effectiveness of mitigation possible; so too therefore the overall impact of the proposed development on recorded use of the site by bats. As such the mitigation measures outlined in the 2018 report cannot be taken to indicate that the impact of the appeal scheme would be the same, could be mitigated in the same way, or indeed to the same extent as the scheme for 3 dwellings.
11. It is clear that alternative options for development of the site exist, but in the absence of evidence it is not possible to conclude whether the scheme for 3 houses, or another, would represent a more or less satisfactory alternative to the appeal scheme. Notwithstanding the fact that Pipistrelle bats are identified as 'common', the relative effect on the conservation status of the species cannot therefore be ascertained.
12. No imperative reasons of overriding public interest have been identified that would justify the harm that would and could arise to bats were the proposed development to proceed.
13. Both parties indicate that they are content to make use of a condition to cover provision of a further survey, and specification of mitigation measures specific

to the appeal scheme. This was indeed suggested by the Council's ecologist during assessment of the planning application. Paragraph 99 of Circular 6/2005 however states that such conditions should only be used in exceptional circumstances. In this regard reference to an adjacent site where conditions were used to secure survey and mitigation work does not constitute evidence of exceptional circumstances. Furthermore the fact that the scheme is in outline does not provide an exception in itself, or provide the flexibility suggested by the appellant given that the maximum number of dwellings would in effect be fixed, and associated constraints on site design accepted in advance of an understanding on their likely impact on bats. No other evidence is before me to suggest that exceptional circumstances exist.

14. For the reasons outlined above I conclude that it has not been demonstrated that the appeal scheme would avoid or adequately mitigate unacceptable harm to bats. This would conflict with Policy CP2 of the New Forest National Park Local Development Framework Core Strategy and Development Management Policies Development Planning Document 2010 (the CS), which amongst other things states that proposals should protect maintain and enhance nationally, regionally and locally important sites and features of the natural environment, including habitats and species of biodiversity importance. Furthermore paragraph 175(a) of the Framework indicates that in the absence of avoidance or adequate mitigation of harm to biodiversity, planning permission should be refused.

Character and Appearance

15. The appeal site comprises a currently vacant detached dwelling on a relatively large garden plot located on North Road, a side street which adjoins Lymington Road.
16. Selected buildings with a frontage on Lymington Road are incorporated with the conservation area. These include some of the dwellings which immediately neighbour the site, and the buildings opposite. The appeal site is itself clearly excluded, and whilst falling within the setting of the conservation area, currently makes no obvious contribution to its significance. Whilst most buildings included within the conservation area appear to be reasonably 'historic', modern residential developments more substantially characterise the broader setting of the appeal site. The setting of the appeal site is otherwise physically dominated by the campus of Brockenhurst College, which lies immediately to the north, though is currently heavily screened by vegetation.
17. The Highways Authority indicates that the proposed access arrangements are acceptable, subject to the imposition of conditions regarding provision and maintenance of the visibility splay. I agree that these would be necessary in the interests of highway safety. The Council's concerns therefore specifically relate to the potential to deliver an acceptable scheme with regard to the reserved matters of layout, scale, appearance and landscaping.
18. As the size and shape of the site, combined with the position of the access, the amount of accommodation proposed and the root protection areas indicated appear to leave limited scope for variation in the arrangement of the development, I consider that the indicative plans provide a reasonable guide to the layout and scale of buildings likely to be presented for approval at a later stage.

19. Notwithstanding the attention the Council draws to the single plot depth of historic development along Lymington Road, it raises no objection in principle to development at the back of the site, and indeed refers to its support for an alternative scheme that would deliver this. In my view development at the back of the site accessed off North Road would not be read in relation to the Lymington Road frontage, and this would be reinforced by its limited visibility from Lymington Road. As such development at the back of the site would not adversely affect appreciation of the historic layout of development within the conservation area.
20. Taking into account access and parking requirements, all 4 units on the site would stand within compact plots. Similarly compact plots occur in conjunction with various terraced developments along Lymington Road, and at Dray Mews further along North Street itself. Coverage by buildings of the adjacent plots fronting Lymington Road is also much greater than shown on plans, presenting what appears on the ground to be generally densely developed setting. In this context there appears to be no reason to consider that the development proposed would appear cramped.
21. The Council raised particular objection to the provision of a 3-unit terrace within the indicative scheme. Whilst 3-unit terraces and other linear buildings forms in fact appear to be common within the immediate vicinity of the site, including along parts of Lymington Road within the conservation area, there is no evidence before me to suggest that provision of a 3-unit terrace is the only way the site can be developed. It would indeed be possible to break up the form and arrangement of the 3 units at the back of the site in various ways. As such I am satisfied that potential exists for the Council to agree acceptable building designs with regard to the reserved matters of layout, scale and appearance.
22. Whilst the Council also raised an objection to the composition and detailing of buildings within the indicative scheme, it is again open for the Council to agree the specific aspects of building composition and detailing with regard to the reserved matter of appearance. Again there is no evidence before me to suggest that this would not be possible, or that designs sympathetic to those of adjacent buildings within the conservation area could not be produced.
23. With regard to the purposes of the New Forest National Park designation, and advice in paragraph 172 of the Framework to give great weight to the conservation and enhancement of landscape and scenic beauty in National Parks, given the location and context of the site within the settlement the development would not cause any harm to either the character or appearance of the landscape, or scenic beauty of the National Park.
24. For the reasons above, I conclude that subject to the agreement of reserved matters via condition, the development would not have an adverse effect on the character and appearance of the area, and would preserve the setting of Brockenhurst Conservation Area. It would therefore be in accordance with Policy DP1 of the CS, which seeks to secure high quality design, Policy DP9 of the CS which seeks to secure development at densities that do not comprise the character of the area, or Policy CP8 of the CS which seeks to prevent development that would suburbanise or erode the local character of the National Park. It would also not be at odds with guidance in the Design Guide Supplementary Planning Document 2011.

Living Conditions

25. The indicative scheme suggests potential for overlooking between units at the back of the site and those newly constructed on the adjacent site of September Cottage. This could also occur within the scheme itself given that units to the rear could overlook the one at the front, and some limited overlooking of neighbours could also arise.
26. Whilst overlooking cannot be entirely avoided within a densely developed context, and some degree of overlooking is therefore acceptable, it is apparent that it would be possible to vary the internal layouts and the arrangement of windows within and between the elevations of units in order to avoid and minimise both overlooking and front-back conflict between neighbouring dwellings. Boundary treatments could also provide effective screening between neighbouring properties.
27. Thus whilst the indicative scheme does not clearly demonstrate effective management or mitigation of overlooking, I have been provided with no evidence to suggest that this could not be achieved within the scope of the reserved matters.
28. A range of additional effects on the living conditions of neighbours have been claimed. These include potential for overbearing, creation of noise and disturbance, and loss of sunlight. These concerns are not shared by the Council, and, given the development options that still exist, I see no reason to take a different view.
29. I note however that by virtue of the site access arrangements, the position of Unit 1 would have to lie closer to the boundary with the neighbouring dwelling than the principal 2-storey part of the existing dwelling, and that a differing effect with regard to overbearing and overshadowing of the small amenity area and conservatory to the rear of the neighbouring dwelling could potentially arise.
30. It is however apparent that the plans omit a single storey element of the existing dwelling on site that currently wraps around the neighbouring boundary and which has an acutely overbearing effect on the amenity space in question. This would be removed within the proposed development bringing some benefit. The amenity area in question also does not appear to be the sole or principal outdoor space attached to the neighbouring dwelling, as a larger enclosed garden space is located towards the front. As, on account of relative orientation, any increased potential for shading would appear to be partial, and careful handling of the exact position, form and scale of development and boundaries would otherwise provide scope to minimise adverse effects, I am satisfied that no unacceptable degree of harm to the neighbouring dwelling would arise.
31. For the reasons above, I conclude that subject to the agreement of the reserved matters via condition, the development would not have an adverse effect on the living conditions of neighbours, and would therefore not be contrary to Policy DP1 of the CS which amongst things requires that amenity is not adversely affected by overlooking.

Other Matters

32. The site lies within 400 metres of the New Forest Special Protection Area, and within 5.6 kilometres of Solent and Southampton Water Special Protection Areas. Both parties agree there is a need to contribute towards mitigation of potential impacts on habitats sites, and the appellant has submitted a Unilateral Undertaking in this regard. Given my findings on the main issues however, this is not a matter I need to address.

Conclusion

33. I conclude that subject to careful agreement of reserved matters by condition the proposed development would have no adverse effect on the character or appearance of the area, including the setting of the conservation area, and no adverse effect on neighbour amenity. These findings do not however outweigh the unacceptable harm that could arise to bats as a result of the proposed development. As such, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR