



## Appeal Decision

Site visit made on 4 January 2019

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

an Inspector appointed by the Secretary of State

Decision date: 27<sup>th</sup> February 2019

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**Appeal Ref: APP/B9506/W/18/3207143**

**Magnolias, Elcombes Close, Lyndhurst SO43 7DS**

- 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 Dr Geoff Rolls against the decision of New Forest National Park Authority.
  - The application Ref 17/01057, dated 6 December 2017, was refused by notice dated 13 February 2018.
  - The development proposed is described as, replacement dwellings (demolish existing).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council has confirmed that though Policy CP9 of the New Forest National Park Core Strategy and Development Management Policies DPD 2010 (the CS) was referenced in the decision notice, reference should have been made to Policy DP9. This is reflected in the fact that Policy DP9 is referred to in the body of the officer report, rather than Policy CP9. The appellant has also noted this and provided comments within the appeal statement accordingly. As such, and given that the interests of the appellant would not be prejudiced in so doing, I have also made reference to Policy DP9 in my reasons below.

### Main Issues

3. The main issues are:
  - the effect of the development on the character and appearance of the area including a protected tree, the setting of listed buildings, the setting of Lyndhurst Conservation Area (the conservation area), and the New Forest National Park (the National Park); and,
  - the effect of the development on the New Forest Special Protection Area (the SPA).

### Reasons

#### *Character and Appearance*

4. The site is located with its frontage on Elcombes Close. Development along Elcombes Close principally consists of modern 2-storey dwellings positioned on broad, generally well vegetated plots, set back from the road frontage and well-spaced. The established layout therefore has a spacious and verdant

appearance which can be reasonably described as 'suburban' in its general character.

5. The site also backs onto the A35, which is a main route into Lyndhurst. However as noted above, the existing bungalow is a peripheral feature, standing at higher level and set back from the road, partly screened by vegetation and the boundary wall. So whilst it can be viewed if standing on the verge opposite, and can also be seen from the road, principally when travelling out of the town, it lacks any prominence or importance within the street scene.
6. The proposed development would see the existing bungalow replaced by two 2-storey houses. Insofar as the proposed dwellings would be of a similar scale and similar design to that of most other dwellings in the street, the proposed scale and design would not be harmful.
7. The 2 dwellings would however be placed on notably narrower plots in much closer proximity to one another than is typical along Elcombes Close. This closeness would be accentuated by the fact that the 2-storey elements of the dwellings would be positioned either side of the gap between them, emphasising its limited width. Additionally the gap between Plot 1 and the neighbouring dwelling to the east would be significantly reduced. This increase in the intensity of built form across the site would provide a cramped appearance acutely at odds with the established spacious layout of development along Elcombes Close. This would significantly undermine the visual character of the street.
8. My attention has been drawn to 3 sites within the local area where closely spaced buildings have either been provided or resulted from previously approved developments. I have been given limited information regarding these schemes, however I note that the setting of the Custards site is characterised by much denser housing than occurs along Elcombes Close. Whilst Surigao and Purlieu are each located within streets where the layout is similarly spacious, the effects of these schemes differ from those of the current appeal scheme. This is on account of their particular design and position within the street scene, and the exact mix, type and relative positions of other dwellings and vegetation within their immediate settings. Consequently these developments have not affected my consideration of the planning merits of the proposed development.
9. I note the appellant's evidence that development within the vicinity has partially evolved through a process of infilling, which has necessarily involved the loss of open space. This has nonetheless created the character of Elcombes Close as it exists at present, and against which the proposed development is being assessed. I also acknowledge that Elcombes and Little Elcombes provide a higher density of accommodation than proposed, however this is partly on account of the fact that the building contains flats. I further note that whilst this building is accessed off Elcombes Close, unlike the appeal site its primary visual relationship is with the A35.
10. I see little reason to consider that any adverse effects would arise with regard to on-street parking given the level of off-street provision proposed. Nonetheless, on account of the proximity of the 2 dwellings, and the adjoining parking layout shown, it is apparent that if the proposed space were to be fully utilised by 6 vehicles the frontage would be dominated by parked vehicles. This would provide the frontage with a more congested appearance than is typical of

development along Elcombes Close, where the parking space for individual plots is generally more distinct. Whilst existing trees would be retained it appears that there would be little additional scope for screening to mitigate this effect. The potential increase in parking across the frontage of the site would therefore be further at odds with the established character of the street scene.

11. The site contains a holm oak, which is protected by a Tree Preservation Order. This tree is visually prominent from the A35 where it makes an attractive, positive contribution to the character of the street scene.
12. Given that the tree is of dense and non-deciduous type, its height, canopy spread and location on the south side of the site has the potential to cast significant shade across the proposed development. Whilst this is acknowledged in the preliminary shading diagram within the Arboricultural Impact Assessment (tree report), I observed much greater shading during my site visit. This extended beyond the rear elevation of the existing dwelling affecting windows in the rear elevation. As the rear elevation of Plot 2 would be positioned further back, closer to the tree, there is a consequent likelihood that the opening serving the kitchen/family room in particular would be subject to acute shading during the winter, and some reduction in levels of light. A substantial proportion of the useable back garden area of Plot 2 would also be subject to shading throughout the year, the adverse effect of which would again be greater than at present given the more compact garden space provided.
13. The tree report does not indicate that the oak is yet fully grown, therefore some increase in the degree of shading could be anticipated in the future. The limited benefits provided by the tree in reducing the intensity of sunlight, and providing screening would, in my opinion, be unlikely to outweigh the adverse effect of shading and loss of light on the living conditions of occupants. Consequently pressure to remove or reduce the size of the tree would be likely to arise. Notwithstanding the fact that the status of the tree would provide strong grounds to resist such pressure, the Council, as a decision maker, considers that it would struggle to resist. I agree that this concern is justified given that the existence of unreasonable living conditions would be likely to weigh against retention of the tree in its current form. Uncertainty would therefore exist with regard to the future of the tree if the development took place.
14. The Council's submissions variously indicate that the development would harm the settings of 3 listed buildings and a listed wall, which are also defined as designated heritage assets. These consist of Elcombes and Little Elcombes (Grade II), the Church of St Michael and All Angels (Grade I), and the Queen's House (Grade II\*) all located to the east of the site, and the wall in front of Elcombes and Little Elcombes (Grade II). It is as such necessary to have special regard to the desirability of preserving the setting of these buildings and structures.
15. The significance of the Elcombes and Little Elcombes lies particularly in its surviving C18th architecture, of Queen's House, in its C17th construction and surviving details, and of the Church of St Michael and All Angels, in its interior decoration and external presence with the townscape. The specific significance of the wall partly lies in its association with Elcombes and Little Elcombes.

16. The Council has not indicated how the significance of any these designated heritage assets would be affected by the development, or specifically identified the degree of harm that it considers that this would cause.
17. It is necessary to travel beyond the site to properly view each of the 3 buildings. Even on the main approach towards them along the A35, the site is peripheral within the view, as would be the proposed development, blending into a general background of modern housing. As such the ability to appreciate the significance of these heritage assets would be unaffected by the proposed development.
18. The listed wall forms part of the southern boundary of the site. By this point in its length however, its relationship with Elcombes and Little Elcombes is not immediately apparent. Indeed the wall also runs along the southern boundary of the dwelling between the site and Elcombes and Little Elcombes. In the same way that the wall currently exists as a feature at the edge of the highway, distinct from the modern development to its north, it would remain a distinct feature following the development proposed. The ability to appreciate its significance, and particularly the role it plays in enclosing the frontage of Elcombes and Little Elcombes, would therefore again be unaffected.
19. The boundary of the conservation area, which is a designated heritage asset, runs along the south edge of the site. The A35 and land on the south side of the A35 is therefore included within the designation whilst the appeal site itself is immediately outside. The A35 provides a key approach to the historic centre of the settlement, within whose historic layout, and architectural character and appearance the significance of the conservation area principally lies. This includes the listed buildings considered above.
20. I note however that the buildings on the south of the A35, opposite the site, are modern dwellings, similar to those on the north side of the A35, including that currently on the appeal site. The boundaries of these dwellings are similarly robustly enclosed, and views toward the historic centre are funnelled forward. This is particularly true for pedestrians whose views of the dwellings on both sides of the road are generally well screened, and limited by the absence of a footpath on the south side of the road. On account therefore of the visually peripheral nature of the proposed development, and fact that the proposed dwellings would be generally consistent in type to those either side of the A35, both inside and outside the conservation area, the development would not appear particularly noticeable or therefore present a distraction sufficient to affect the ability to appreciate the significance of the conservation area.
21. The holm oak does not appear to form part of a broader group of associated planting otherwise included within the boundary of the conservation area, and does not otherwise make any obvious contribution to the significance of the conservation area. Notwithstanding the general harm that would be caused to the character and appearance of the street scene by possible loss or reduction in the size of this tree, the more specific ability to appreciate the significance of the conservation area in the event that this occurred would again be unaffected.
22. I have taken into account the statutory purposes of the National Park designation, and advice in paragraph 172 of the National Planning Policy Framework to give great weight to the conservation and enhancement of landscape and scenic beauty in National Parks. As the site is located well within

the settlement, and not exposed to any landscape views, the development would not harm the character or appearance of the landscape, or the scenic beauty of the National Park. Furthermore, and on account of my reasons above, the development would not conflict with the purpose of the designation with regard to the conservation and enhancement of cultural heritage.

23. For the reasons outlined above I conclude that the development would not have an adverse effect on the national park or the settings of the conservation area and listed buildings. It would therefore accord with Policy CP7 of the CS which seeks to protect, maintain or enhance nationally important sites and features of the built environment, and Policy CP8 of the CS which seeks to avoid development that would result in a suburbanising effect within the National Park. Furthermore there is no particular evidence to indicate that the development would conflict with the design principles set out in Policy DP6 of the CS. Nonetheless I conclude that the development would have an unacceptably adverse effect on the character and appearance of Elcombes Close and the more general contribution made to the character and appearance of the broader area by the protected tree. The development would therefore conflict with Policy DP1 of the CS which amongst other things seeks to secure development that is appropriate and sympathetic in terms of siting and layout, and which enhances local character and distinctiveness; and Policy DP9 of the CS which seeks to restrict development that would compromise the character of the local area where this is characterised by spacious residential plots.

#### *The SPA*

24. The absence of contributions to mitigate any potential adverse effects on the integrity of the SPA, was a reason for refusal of planning permission. The decision notice therefore indicates failure to comply with Policy CP1 and the Development Standards Supplementary Planning Document 2012. Each states that contributions to mitigate potential adverse effects will be sought from housing developments within 400 metres of the SPA. The SPD states that the approach is supported by Natural England. However, according to the appellant the site lays more than 640 metres outside the SPA, and the Council has also confirmed that the site lies beyond the 400 metres quoted within Policy CP1 and the SPD.
25. Policy CP1 does not preclude the need to consider adverse effects on the integrity of the SPA, and this is further explained within the third bullet of paragraph 6.3.6 of the SPD, which indicates the potential for sites beyond 400m to have an effect, thus requiring a case by case assessment.
26. Had the circumstances existed within which the current appeal could be allowed, and planning permission potentially granted, it would have been necessary for me to consider the effect of the scheme on the integrity of the SPA, and the scope for mitigation. As the appeal will be dismissed on other grounds however, it is not necessary for me to consider this matter further.

#### **Other Matters**

27. Failure to comply with Policy DP15 of the CS is also included within the decision notice in relation to SPA mitigation. However Policy DP15 addresses developer contributions towards infrastructure, which the supporting text lists as highway works, affordable housing and education provision. None appear to be relevant to the appeal scheme.

28. I note the appellant's comments that the proposed dwellings might be attractive to families, that the existing building is in poor condition and that the replacements would be more energy efficient. However occupancy by families cannot be guaranteed, and the condition and energy efficiency of the existing building could be addressed without the need for the development. These points do not therefore alter my conclusion regarding the unacceptability of the appeal scheme.
29. Whilst the appeal statements of both parties address the provision of housing to meet local needs, it is apparent that this primarily stems from reference to Policy CP9 of the CS as noted in my procedural matters. The provision of housing to meet local needs was indeed not considered in the officer report, nor was a failure in this regard given as a reason for refusal of planning permission. Furthermore it is apparent that the provision of housing to meet local needs is not a prerequisite for new residential development within the Council area. This matter has not therefore affected my consideration of the merits of the appeal.
30. The Council has made further reference to emerging policies within the New Forest National Park Local Plan which seek to restrict replacement dwellings to a floor space of 100m<sup>2</sup>. Whilst I have not been provided full details of these policies, and they were not referred to in the decision notice, the Council also notes that whilst the plan is at an advanced stage objections to the policies remain. I agree with the Council therefore that limited weight can be given to these policies, and consequently they have not affected my consideration of the appeal.

### **Conclusion**

31. Exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, I find that in this case material considerations, including the support of the parish council, do not indicate that my decision should be made other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

*Benjamin Webb*

INSPECTOR