

## Appeal Decision

Site visit made on 9 March 2016

**by John D Allan BA(Hons) BTP MRTPI**

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

**Decision date: 26 April 2016**

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**Appeal Ref: APP/B9506/W/15/3139150**

**Former Scout Hut, Brookley Road, Brockenhurst, Hampshire SO42 7RD**

- 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 Mrs J Overall against the decision of New Forest National Park Authority.
  - The application Ref 15/00342, dated 27 April 2015, was refused by notice dated 21 July 2015.
  - The development proposed is to construct a terrace of three dwellings; demolish existing building.
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### Decision

1. The appeal is allowed and planning permission is granted to construct a terrace of three dwellings; demolish existing building at former Scout Hut, Brookley Road, Brockenhurst, Hampshire SO42 7RD in accordance with the terms of the application, Ref 15/00342, dated 27 April 2015, subject to the conditions set out in the attached schedule.

### Main Issues

2. Since the date of the Council's decision the appellant has provided a signed Unilateral Undertaking (UU) dated 18 November 2015 and made pursuant to Section 106 of the Town and Country Planning Act 1990. Amongst other things this binds the developer to making a financial contribution of £4272.00 towards mitigating the impact of the development upon the New Forest Special Protection Area (SPA), to accord with Policy CP1 of the Authority's Core Strategy and Development Management Policies DPD (CS), adopted in December 2010. The Council's Supplementary Planning Document (SPD) *Development Standards*, adopted in 2012, details the contributions that would normally be required and I have no reason to consider that the amount would be either unreasonable or conversely trivial. Based upon this, I am satisfied that the provisions of the obligation, insofar as it relates to mitigating any impact on the SPA, would meet the tests set out in Regulation 122 of the CIL Regulations 2010 (as amended), the National Planning Policy Framework (the Framework), and the Planning Practice Guidance (the Guidance).
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3. The main issues are therefore the effect of the proposal on: - (i) the character and appearance of the area; and (ii) the long term retention of the adjoining bowls club as a local community facility.

### **Reasons**

4. The site was the subject of an appeal dismissal in June 2008 (Ref APP/B9506/A/07/2040923) for what was described as a building to accommodate food catering and preparation business on the ground floor with 2 No flats above following demolition of the existing building. I note from the Inspector's decision that the former scout hut was redundant and dilapidated at that time. I can only assume that its condition has worsened in the intervening period. I saw that the building remained in a dilapidated condition and that the grounds were overgrown and unmanaged. In these circumstances, and given the Authority's long held view that the site was appropriate in principle for redevelopment, which was accepted by the previous Inspector, I am satisfied that the loss of the existing building and its use, which has clearly not contributed to the sustainability of the community for many years, would not conflict with the aims or objectives of CS Policy CP10 as it relates to this matter.
5. Although there are suggestions from some that the land could be put to other alternative uses, the appeal before me must be considered on its own merits. In addition, the provision of 3 new homes within the boundary of Brockenhurst, as defined within CS Policy CP9, would conform to part a) of CS Policy CP12 which deals with the location and type of new residential development required within the New Forest National Park over the development plan period.

### *Character and Appearance*

6. I have been provided with a copy of the plans that were considered by the appeal Inspector in 2008. I note from his decision letter that the building proposed at that time was to be more prominent than the existing scout hut, with a larger footprint, higher eaves height, first floor windows and a taller roof. This also fairly accurately describes the current appeal proposal. Nevertheless, the Inspector found that the scale of the building would not be excessive and that, despite recognising that views from the car park over the bowling club grounds and towards the trees beyond contribute to the area's overall spacious character, he concluded that the area's unique character would not be damaged.
7. In this current case the first floor of the proposed houses would be largely accommodated within the roof spaces with approximately single-storey eaves heights for all three units facing towards the bowling club. The front elevation to the car park would be noticeably articulated with the end units appearing more as 1½-storey buildings. The stepped ridge heights and staggered elevations between the dwellings would combine with a mix of detailing and materials to ensure that the new building would be appropriately assimilated into the built character of the area, which is considerably mixed in terms of surrounding uses, building scales and forms, materials, detailing and general architectural styles. I have not detected, and neither have I been directed to, any specific conflict with the Authority's *Design Guide* SPD, adopted in December 2011, which provides a framework to help to achieve high standards

of design and, amongst other things, to retain and enhance the character of an area's built environment.

8. The new building would broadly occupy the position of the existing scout hut but with a slightly narrower footprint and with increased length. I note that the proposed siting would compare favourably with the siting for the 2008 proposal and in my assessment it would not be set unreasonably close to the southern boundary, being separated from it by distances of around 2m. Furthermore, from this aspect the majority width of the building would be set behind a grass verge to this end of the car park. Separation distances with the northern boundary to the bowling club would range from around a minimum of 2.3m to over 3m in places. With open spaces at each end of the building, albeit with the space to one end proposed to be used for car parking, in the context of its spacious surroundings and fairly remote position in relation to other buildings nearby, I am satisfied that the building would appear reasonably comfortable on its plot, with adequate space around it to ensure that it would not appear cramped in its setting.
9. I accept that the residences would be likely to include some garden paraphernalia within their curtilages. However, these would be contained within typical residential boundary enclosures around the perimeter of the site. I see no reason why these would be particularly intrusive or likely to be any more so than comparable features that could be placed within the boundaries of other nearby properties seen from the public vantage points within the car park and which include both residential and commercial properties.
10. Overall, I find that the building would display the level of quality and interest that was found to be missing with the 2008 proposal but which the Inspector nevertheless found could have been reasonably addressed through the imposition of a planning condition. My conclusion on the first main issue is therefore consistent with that for the earlier scheme, being that there would be no harm to the character or appearance of the area. As such, the character and appearance of the Brockenhurst Conservation Area, within which the site is located, would be preserved without any harm to its significance as a designated heritage asset. There would therefore be no conflict with CS Policies DP1, CP7, CP8 or DP9 insofar as they all deal with the effect of development upon the character of an area.

#### *The Bowling Club*

11. The appellant has demonstrated that at periods during the summer months, owing to the height, location and orientation of the proposed building, direct sunlight to the whole grassed area of the bowling green would be achieved. This has not been disputed by the Authority and is accepted by Brockenhurst Bowling Club. The principal concern rests with the effect upon the adjoining playing surface from shadows that would be cast during the autumn and winter periods and any changes to the air flow patterns around the building.
12. There is no dispute between any of the parties that shadows will be cast by the proposed development over parts of the playing surface during parts of the year when the sun is at its lowest. However, it is also accepted by the Bowling Club that the existing fence and building does already cast some shadow over the playing surface. This is unsurprising and from my own observations it is

likely also that other influences locally would cast some shadows over the green at times, particularly towards its south-west corner where it is adjoined by some mature tree planting and a reasonably close set dental surgery building. I have been provided with no information to suggest that any parts of the existing playing surface have been adversely affected by any of the shadowing that already occurs. Therefore, merely because new areas of playing surface may become affected by shadow from a new building that would be taller and longer than the scout hut does not automatically mean that they would be harmed as a consequence.

13. The Council has provided no assessment of the existing or proposed levels of shade across the bowling green. Neither have they provided any information to explain why any increased level of overshadowing would be unacceptable compared with existing levels. Additionally, they have provided no evidence to demonstrate how the playing surface would be harmed as a result. To support their position the Bowling Club has provided a 'Shade Report' prepared on their behalf by a turfgrass nutritionist.
14. The shade report discusses the needs required for sportsturf grasses to flourish and function. It advises that grass that does not receive enough sunlight can have reduced health and vigour and that in turn this would impact upon its management and playability. It concludes that there is '*nothing to effectively replace natural light*'. However, it makes only general references. For example, it states that favourable growing conditions require a '*good percentage*' of natural light, this being neither defined nor explained in detail. Furthermore, the contents of the report are generic and do not consider the particular circumstances at Brockenhurst Bowling Club in terms of the existing quality of the playing surface; the species of grass used; the effect of existing shade; and specifically the implications with regard to the proposed development. It reaches no conclusions on the specific circumstances of the case.
15. I accept that grass will flourish best in full sunlight where it is also provided with sufficient carbon dioxide and water. However, the shade report clearly recognises that the amount of sunlight and shade in any particular location varies with the passage of time. My own interpretation of the report is that grass with less than ideal growing conditions can still succeed but that other inputs, such as a more intense management process for groundsmen and greenkeepers, may be required.
16. In terms of air flow, although the new building would be taller and longer than the scout hut, it would not encroach unreasonably close to the bowling green. Neither would the development enclose the playing surface in any way to make me consider that the air flow around the lawn would be materially affected.
17. The existing playing surface is clearly a well-managed and maintained lawn and I have not been directed to any areas that are unplayable. Some areas are already overshadowed at certain times but there is nothing to suggest that they do not receive an acceptable amount of natural light or that the management regime to maintain them is onerous. New areas of lawn will be placed into shade at certain times. I have no clear information to suggest how much although I note the Club's unsubstantiated view that around one third of the area would be affected. Nevertheless, regardless of the extent, I have no

reason to consider that these areas would not function in exactly the same way as others already successfully do. Some existing areas of shade may experience shade for longer periods. But I have no substantive evidence to persuade me that the percentage of natural light that they would receive would not be good enough, or that appropriate additional management and care could not be employed.

18. I acknowledge the importance to the Bowls Club of the quality to the playing surface. However, from the information available to me, and having carefully considered the general advice contained within the Club's shade report, I am not persuaded that the impact of the proposal would lead to any serious impact that would be harmful or which would impact upon the longevity of the Club. I therefore find no conflict with CS Policy CP10 insofar as it seeks to support the retention of existing community facilities.

#### *Other Matters*

19. I have noted comments made about the extent of the appellant's land ownership around the site and possible discrepancies with the application site boundary. However, the application and appeal forms both confirm that notices were properly given in both circumstances to everyone who was owner of any part of the relevant land. I have no reason to dispute this. Moreover, implementation of parts of the development beyond the appellant's alleged ownership could reasonably be controlled by condition.
20. Each dwelling would be provided with one parking space. The Authority is satisfied that this would be sufficient to serve the development given the size of the units, their location centrally within the settlement and the public transport links that exist nearby. I have no reason to disagree.
21. The application was accompanied by a Flood Risk Assessment. Its conclusions that there should be no flood risk reasons to prevent the development from proceeding were not challenged by the Authority and I note also that the Environment Agency raised no objection. Concern over flood risk to adjacent land from surface run off could reasonably be dealt with by condition, in the interest of neighbours' amenity and to accord with the Authority's policy on this matter.
22. Suggestions that the proposal would impact upon wildlife and protected species are unsupported by the appellant's Preliminary Ecological Survey Report and their Preliminary Bat Survey Report. The findings of both these reports were accepted by the Authority and I have no reason to conclude otherwise.
23. No 3 The Paddocks is a detached dwelling to the south-west of the scout hut and with part of its rear garden separated from the appeal site by a pedestrian route that leads to an adjoining dental practice. The end gable to Unit C would face towards the rear garden to No 3. However, windows at first floor level would be obscurely glazed and fixed shut. This could be secured by condition, in the interests of safeguarding the neighbours' privacy. A first floor window to this unit would be set fairly close to the end of a projecting limb to the irregular shaped garden of No 3. Although there are some trees in this location that may obstruct direct views into the garden, I accept that their long term screening value could not be relied upon. Nevertheless, I am not persuaded that sight into the neighbours' garden would interfere with their living

conditions to a degree that would be particularly harmful given that the vast majority of the remaining fairly large garden space would be unaffected, as would the internal living spaces within the dwelling due to the oblique angle between the respective buildings' elevations and the separation distances involved. Given also the location within the heart of Brockenhurst, and the irregular pattern of surrounding development, there is inevitably going to be some mutual overlooking between the curtilages of adjoining properties. In this instance I find that the impact would not be so serious that it would adversely affect the neighbours' enjoyment of their garden or living spaces. I note also that the Authority had no objection in this regard.

24. I have considered the potential impact of the proposal upon privacy and daylight to the adjoining dental practice to the north-west of the site. However, due to the orientation of the proposed building in relation to the surgery, and the separation distance between them, I am satisfied that there would be no detrimental impact to the function of the surgery in terms of overlooking or loss of light.
25. In addition to the habitats impact mitigation contribution, the appellant's planning obligation includes a commitment to make contributions of £77,700 towards affordable housing within the New Forest National Park; £7008.00 towards public open space provision (POS); and £11,235.00 towards transport.
26. The *Development Standards* SPD provides justification for a variety of financial contributions including affordable housing, public open space provision and transport. However, the officer's report for the original planning application does not directly list any relevant policies from the development plan relating to these matters. Furthermore, it does not address any need for affordable housing, POS or transport measures directly associated with the proposal, or specifically what infrastructure projects the POS or transport contributions are intended for. Neither have I been presented with any such relevant information for the appeal. The report merely discusses the need for the planning obligation in relation to the SPA mitigation. Moreover, when the application was formally determined in July 2015, the planning obligation had not been completed and it is noteworthy that none of the three reasons for the refusal that were given by the Authority related to the absence of any contributions for these three matters.
27. In these circumstances, from the information that is before me, I find that it has not been demonstrated that the obligation, as it relates to affordable housing, POS and transport, meets the tests given in paragraph 204 of the Framework as being necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Furthermore, in relation POS and transport, it has equally not been demonstrated, for the same reasons, that the obligation can lawfully constitute a reason for granting permission having regard to Regulations 122 and 123 of the CIL. I have therefore not relied upon these parts of the obligation when reaching my decision.
28. I have noted some concern that the proposal does not provide on-site affordable housing in line with CS Policy CP11, which states that in this village, 50% of new residential development should be affordable. However, the Authority has stated that the proposal would contribute towards meeting an

acknowledged shortage of 2-bedroom homes in Brockenhurst. In the absence of any specific evidence from the Authority, or any other source, identifying a particular need for affordable homes of any particular size or type in the area, I am satisfied that the proposal would make a valuable contribution local housing need.

### **Conditions**

29. The Authority has suggested a number of conditions which I have considered against the advice within the Guidance. In some instances I have varied the wording of the suggested conditions to more closely reflect the Guidance and model conditions.
30. In addition to those already referred to above, a condition is required to ensure that the development is carried out in accordance with the approved plans, in the interests of proper planning. In the interests of safeguarding the character and appearance of the conservation area conditions are necessary in relation to materials, joinery details, levels and landscaping, including means of enclosure and tree protection works. For the same reason, and having regard to the constraints of the site, it is necessary to control future extensions to the dwellings and outbuildings within their curtilages. For reasons relating to highway safety and amenity conditions are necessary relating to the provision of the car parking facilities. In order to safeguard the living conditions of neighbouring occupiers a condition is required to ensure that the windows to the end elevation of House C are obscurely glazed and fixed shut.

### **Conclusions**

31. For the reasons given, and having regard to all other matters raised, I am satisfied that there would be no harm to the character or appearance of the area, including the Brockenhurst Conservation Area. I am also satisfied that there would be no risk to the long term retention of the adjoining bowls club as a local community facility. Accordingly, and having regard to all other matters raised, the appeal is allowed.

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan at scale 1:1250 and Drg Nos 703:25 A, 703:27 B, 703:28 D, 703:29 A and 703:30 B.
- 3) No development shall take place until details of all external facing materials, including joinery details of windows, doors, eaves, verge and bargeboards, have been submitted to and approved by the local planning authority in writing. The development shall be carried out in accordance with the approved details.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include:

- (a) existing trees and shrubs to be retained;
- (b) a specification for new planting (species, size, spacing and location);
- (c) areas for hardsurfacing and materials to be used;
- (d) means of enclosure;
- (e) a programme for implementation and management.

All hard and soft landscape works shall be carried out in accordance with the approved details and in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 5) The development shall be carried out in accordance with the Tree Survey Schedule, Tree Protection Plan and Arboricultural Method Statement, Drg No TSS/TPP/AMS/18/06/01, and the recommendations of the Tree Report dated 18 June 2015, Ref TR/18/06/15.01.
- 6) No dwelling unit shall be occupied until the parking and cycle parking facilities have been provided in accordance with the details shown on Drg No 703:25 A. These areas shall thereafter be kept available for their intended purposes at all times.
- 7) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building and in relation to existing ground levels, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 8) No development shall take place until full details of the means of disposal of surface water from the site have been submitted to and approved by the local planning authority in writing. The development shall be carried out in accordance with the approved details.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, alterations, outbuildings or enclosures as permitted under Schedule 2, Part 1, Classes A, B, C and E of the Order, or means of enclosure, other than those expressly authorised by this permission, as permitted under Schedule 2, Part 2, Class A of the Order, shall be undertaken or constructed in relation to the dwellings hereby permitted.
- 10) The three first floor windows indicated to be obscurely glazed on the west elevation, as shown on Drg No 703:27 B, shall at all times be obscurely glazed and fixed shut. No further windows shall be added to the west or south elevations of House C at first floor level or above.

*John D Allan* INSPECTOR