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## Appeal Decision

Site visit made on 15 March 2022

**by S Leonard BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 April 2022**

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**Appeal Ref: APP/B9506/W/21/3286915**

**Gilbury, Gilbury Lane, Exbury SO45 1AG**

- 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 and Mrs Hoyle against the decision of New Forest National Park Authority.
  - The application Ref 21/00615, dated 22 June 2021, was refused by notice dated 18 August 2021.
  - The development proposed is erection of a replacement dwelling, along with the demolition of 2 existing outbuildings, the erection of a hobby art studio, detached garage, detached boathouse, swimming pool and associated hard and soft landscaping.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. As part of this appeal, the appellants have submitted amended drawings to replace drawing Refs 1630/P11E, 1630/P12D, 1630/913D, 1630/P14A, 1630/P15A, 1630/P16C and 1914-DLF-ELG-XX-CA-EO-13001 dated 13 May 2021. These amendments include more restricted access, increased planting and reduced lighting to areas of steps/terracing on the northern wing of the building. A revised lighting report has also been submitted.
3. The planning appeals procedural guidance<sup>1</sup> (Annexe M) advises that, if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application. Moreover, if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
4. The appellants aim to reduce the impact of the appeal scheme on neighbouring occupiers, without altering the description of development, and the proposed alterations comprise a minor part of the overall development. However, noting the Wheatcroft Principles, I must consider whether the appeal scheme would be so changed, that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. Having regard to the number and nature of third-party representations, including those from neighbouring properties, I am not satisfied that in accepting these amended plans, it would not cause prejudice or injustice to any

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<sup>1</sup> Procedural Guide. Planning Appeals – England. The Planning Inspectorate October 2021

interested party, who may wish to comment upon them. Accordingly, I have determined the appeal on the basis of the scheme which was refused by the Council, and the plans listed on the decision notice.

5. The Council has drawn my attention to its adoption of a new *Design Guide Supplementary Planning Document* in January 2022 (the Design Guide SPD), which was after the refusal of the planning application and the submission of the appeal. In principle, I afford weight to this document due to its role in supporting the relevant policies of the *New Forest National Park Local Plan 2016-2036* (2019) (the Local Plan). The appellants have had the opportunity to comment on the new SPD at final submission stage, and the Council has confirmed that it does not comprise new policy. As such, I find that neither party has been prejudiced by the timing of its adoption.

## **Main Issues**

6. The main issues are:

- The impact of the proposal on the character and appearance of the area; and
- The impact of the proposal on the living conditions of the occupiers of the adjoining properties, having regard to privacy impacts.

## **Reasons**

### *Character and appearance*

7. The appeal site is located in open countryside within the New Forest National Park. It lies to the east side of the Beaulieu River and north of Exbury Gardens. It is occupied by a detached, two-storey, late 20<sup>th</sup> century dwelling, which is sited within a large, maturely landscaped and treed plot, which slopes downwards in a south/southwesterly direction towards the river. Access is via Gilbury Lane, a narrow, unlit, unpaved, no-through rural lane, which terminates close to the appeal site and the river. In addition to the appeal property, it serves several residential properties to the north/northeast, including two detached dwellings close to the appeal site, and a more recently constructed contemporary dwelling further to the north.
8. The opposite side of the lane is undeveloped and heavily treed, and land to the west of the site is similarly undeveloped. As such, and having regard to its position at the end of the road and close to the river, together with its treed and landscaped surroundings, the site has a notably verdant and tranquil character. Moreover, the site lies within one of the darkest locations according to the CPRE dark skies mapping information.
9. The existing property has a simple, traditional design, with white painted brick walls under a pantiled pitched roof. There are a number of modest outbuildings/additions, including a detached garage block to the rear, a side conservatory, a pool house and various gardeners' structures.
10. I have noted that the proposal would accord with the maximum floorspace increase permitted by Local Plan Policy DP36, that the replacement dwelling would largely follow the footprint of the existing dwelling, and that the proposal would result in a comparable percentage of the site being built upon as on adjacent residential sites.

11. Moreover, there is no objection, per se, to a replacement dwelling of a different, and more contemporary design, having regard to the variety of housing designs and materials that currently exist alongside the riverbank, or elsewhere within the vicinity of the appeal site, such as the replacement dwelling known as Eclipse, to the north of the appeal site.
12. However, I must consider the appeal proposal on the merits of the scheme before me and the details of the appeal site, including the nature of the buildings to be replaced, and the location of the site in relation to the river and surrounding undeveloped land.
13. I find that, due to its combined design, scale and position on the site, the replacement dwelling would result in a notably greater perception of built development on the site than that which currently exists, having regard to its visual appearance within the wider landscape and its impact upon the rural tranquility and dark skies associated with the site.
14. The site is located at a particularly prominent position along the river, close to a sharp bend, where it is visible in views from the opposite river bank, and also, importantly, from along the river when approaching from the south from a long straight stretch of the river. The existing house is clearly visible in views from the river, due to its proximity to, and elevated position in relation to, the river, and due to the absence of mature trees to the south of the building. The replacement building would be similarly visible in these views, and would be 'framed' by the remaining mature trees on the appeal site.
15. The replacement building would be taller than the existing building, and would also incorporate an additional 'storey' of accommodation due to the proposed roof height terraces. This would be apparent in views towards the site from the river, particularly during times when the terracing is in use during hours of darkness. The contemporary design, incorporating a mix of pitched and flat roofs, unusual features such as orphan gables, and the use of white and pink brickwork incorporating a mix of brick bonds and hit and miss brickwork, together with elements of bronze and stone, would all serve to contribute to the building assuming a striking and uncommon appearance. This could reasonably be expected to serve to draw more attention to its presence in wider views than the existing simple traditional pitched roof building.
16. The proposed inclusion of planting within the new building structure, and new tree planting on the site are noted. However, I am not persuaded that this would satisfactorily mitigate the impacts arising from the more striking visual appearance of built development on the site. Any new tree planting in front of the building would potentially conflict with the retention of views from the property towards the river. Also, the implementation and future retention of landscaping could not be guaranteed in the future, and it is not appropriate to rely upon such to make an otherwise inappropriate form of built development acceptable within its surroundings.
17. Whilst the existing building incorporates some terracing, this is at ground and first floor level, and is capable of being illuminated at night by the existing fenestration openings adjacent to which it is sited. Moreover, the ground floor south elevation terracing, with its roofed loggia style structure, also serves to provide some shade to the ground floor glazing behind it, thereby reducing the impact of glare effects from this glazing in wider views towards the house from

the river. This would offset benefits resulting from the proposed small percentage reduction in river-facing glazing identified by the appellants.

18. Such benefits would also be reduced by the proposed introduction of a greater overall area of glazing for the proposed dwelling, including a large glazed atrium, as noted in the appellants' supporting Light Technical Report (LTR). There would also be roof lights within the proposed artists studio building. As such, there would be an increase in the amount of skyward facing glazing within the built development on the site as a result of the proposal.
19. There is some existing external lighting to the existing property, over which there are no planning controls. However, the evidence before me is that these are low in number and predominantly sited close to the walls of the existing building. Moreover, there is no substantive evidence before me to demonstrate the extent to which these lights currently impact upon the visual amenities and tranquility of the appeal site and its surrounds.
20. The appeal scheme would introduce a very large number of new external artificial lights onto the appeal site in association with the new roof terraces, stepped accesses, garden paths, outbuildings, pool and parking area, each of which would result in an element of light wash. I find that this, in itself, comprises an urbanising impact upon the appeal site. Such lighting, a large proportion of which is in an elevated position, and the associated use of the outdoor elevated terracing, would together, detrimentally erode the tranquil nature of the appeal site, both through light pollution and noise pollution impacts.
21. I have given careful consideration to the appellants' supporting LTR, noting the proposed lighting design and mitigation strategy upon which preventing harm to the character and appearance of the area would be dependent. The appellants acknowledge that the implementation of these measures, which include PIR sensors, a Lutron control system, careful positioning and design of the lighting, would be necessary to make the development acceptable.
22. However, I am not persuaded that ensuring these measures are carried out by means of a planning condition is appropriate or enforceable in this instance. Having regard to factors including the sheer amount of lighting to be controlled, the relatively remote rural nature of the site, and the subsequent domestic needs of future occupants, I consider that such a condition would be difficult to enforce. It would also potentially place unduly onerous requirements which would affect the everyday domestic occupation of the dwelling, for example the proposed restriction upon the hours of operation of the lighting.
23. The appellants have drawn my attention to 2 allowed appeal decisions<sup>2</sup> where the appeal Inspectors imposed lighting conditions similar to that proposed by the appellants. However, on the basis of the information before me, I do not find the circumstances in respect of these appeals to be directly comparable with those of the current appeal, including the nature of the appeal site and the appeal scheme details. As such, they do not alter my conclusions on this matter, which have regard to the sensitive location of the appeal site within an area identified as a relatively dark area in accordance with the CPRE Light Pollution *Map*, and within a National Park where the landscape is afforded the highest status of protection in relation conserving and enhancing landscape and

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<sup>2</sup> Refs 3268794 and 3177340

scenic beauty in accordance with the National Planning Policy Framework 2021 (the Framework).

24. For the above reasons, I conclude that it has not been satisfactorily demonstrated that the appeal proposal would not cause significant harm to the character and appearance of the area. It would, therefore, be contrary to Local Plan Policies SP1, SP7, SP15, SP17, DP2 and DP18 and the Design Guide SPD. These policies and guidance, amongst other things, seek to ensure that new development comprises the highest standards for new design, which conserves and enhances the New Forest landscape and local character and distinctiveness, and protects landscape setting, including appropriate design, layout, massing and scale, and avoiding artificial lighting from eroding rural darkness and tranquility and gradual suburbanising effects within the National Park.
25. For similar reasons the proposal would not accord with policies of the Framework which require well-designed places and the conservation and enhancement of the natural environment, noting that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, as set out in Chapters 12 and 15 respectively.

#### *Living conditions*

26. The Council's second reason for refusal relates to harm to the living conditions of the occupiers of the property known as Gilbury Coach House, to the east of the appeal site, due to loss of privacy towards the garden of that property. The Officer Report and the Council's Statement of Case confirm that the Council's objections relate to the impact of the appeal scheme on the occupiers of several neighbouring properties, and that these privacy concerns include overlooking and noise disturbance associated with the use of the proposed terraces and visual impacts and activity in connection with the proposed 3 outbuildings.
27. As such, I have considered these concerns, having regard to the proximity of the 2 neighbouring properties of Gilbury Coach House and Gilbury Reach to the appeal site, and the nature of third-party concerns in respect of the perceived impacts of the proposal on the living conditions of the occupiers of these properties. In so doing I have noted the proximity of neighbouring gardens and facing principal windows to the appeal site.
28. The proposal would introduce a number of external raised terrace/balcony areas to the appeal site, which would give rise to outdoor residential activities associated with the future occupants' use of these areas. However, notwithstanding my conclusions above in respect of the impact of these areas on the character and appearance of the locality, I find that they would be sufficiently distanced from the neighbouring property boundaries, and orientated and designed, so as not to harm a materially harmful impact on neighbouring privacy.
29. In coming to this view, I have taken into account the distance between the new building and the neighbouring properties, land levels across the appeal site in relation to the properties to the north and east, and the existence of intervening mature landscaping and boundary fencing. I have also considered how the imposition of appropriate planning conditions could ensure the

installation of privacy screening to the edges of the new terraces where necessary and appropriate.

30. Neither, on the basis of the information before me, which includes proposed cross-sectional drawings, am I persuaded that the proposed siting of the 3 new outbuildings would be unduly harmful to neighbouring living conditions. These structures would comprise a modest footprint, scale and height, and planning conditions could ensure the implementation of the proposed ground levels associated with their construction and boundary screening. As such, and having regard to their ancillary domestic functions in connection with the main dwelling, they would not demonstrably harm neighbouring privacy as a result of their physical presence or the nature of their use.
31. For the above reasons, I conclude that there would be no materially harmful impacts upon the living conditions of the occupiers of the adjoining properties, having regard to privacy impacts. As such, the proposal would accord with Local Plan Policy DP2, in so far as this policy seeks to ensure that new development would not result in unacceptable adverse impacts on amenity.
32. This is generally consistent with paragraph 130 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

### **Other Matters**

33. I acknowledge that the proposal represents an amended scheme from that of a previously refused application<sup>3</sup>, including a reduction in the dwelling floor area, proposed tree planting, and the provision of additional supporting information. However, this does not alter my findings in respect of the current proposal.
34. I acknowledge that the proposal would incorporate sustainable design elements. Also, that the Council has not raised any objection in respect of other issues, including biodiversity, tree and highway safety impacts. However, these are requirements of national and local planning policies in any case, and do not outweigh my conclusions on the first main issue.

### **Conclusion**

35. Notwithstanding the lack of demonstrable harm to the living conditions of neighbouring occupiers, the significant harm to the character and appearance of the area is a sufficient reason to dismiss the appeal.
36. For the reasons given above, I conclude that the appeal should be dismissed.

*S Leonard*

INSPECTOR

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<sup>3</sup> Ref 21/00102/FUL