
Appeal Decision

Site visit made on 5 January 2016

by David Cliff BA Hons MSc MRTPI

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

Decision date: 03 March 2016

Appeal Ref: APP/D1780/W/15/3133911

Land at rear of 38-40 Lime Avenue, Southampton SO19 8NZ

- 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 M Dexter against the decision of Southampton City Council.
 - The application Ref 15/00899/FUL, dated 1 March 2015, was refused by notice dated 25 June 2015.
 - The development proposed is 'erection of 2 x detached 3 bedroom dwellings at land of 38-40 Lime Avenue, with associated works'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposed development on i) the integrity of the Solent Coastline Special Protection Areas and ii) the character and appearance of the area.

Reasons

Special Protection Areas

3. Policy CS22 of the Core Strategy includes the aim of protecting the integrity of international designations and requires that necessary mitigation measures are provided. The Council has raised objection to there being no mechanism for a financial contribution of £174 per dwelling to be made towards the Solent Disturbance Mitigation Project (SDMP) to ensure that the development (located within 5.6km of the Solent coastline) and the additional recreational pressures arising from it, along with other developments, would not result in increasing disturbance to waders and wildfowl within the Solent Coastline SPAs. Such disturbance reduces the birds' opportunities to feed and impacts on their winter survival and completion of their migratory journey to their summer time habitats. On the basis of the evidence before me and notwithstanding the lack of any representation from Natural England, I consider that the proposal in combination with other developments is likely to result in significant adverse impacts upon the SPAs. The Habitats Regulations contain a precautionary principle that, in the absence of evidence that an adverse effect from any proposal or project on the integrity of the SPAs would not occur, planning permission should not be granted.
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4. During the consideration of the appeal, the appellant has made a direct payment to the Council by cheque for the sum required accompanied by a 'Habitats Mitigation Contribution Agreement' under Section 111 of the Local Government Act 1972. The Council states that the financial contributions it seeks towards the SDMP are focused on visitor management measures.
5. Nevertheless, I have certain reservations about the form of the agreement which does not have the same legal basis as an obligation under Section 106 of the Town and Country Planning Act 1990 (as amended). Whilst I note that the Council says it would utilise the contributions towards the appropriate mitigation, the agreement does not provide any legal certainty or guarantee that the contribution would be used for its intended purpose. Furthermore, although it refers to Core Strategy policy CS22, neither that nor the agreement provide any detail of the specific kind of mitigation the contribution would provide for. There is consequently great uncertainty as to whether the necessary mitigation would be secured in this case.
6. The Council has provided limited details of other appeal decisions including where provision for a financial contribution has allowed the Inspector to be satisfied that no adverse impacts would result upon the SPAs. However, I have no details of the mechanisms utilised to secure the mitigation in those cases although two appear to relate to s106 planning obligations which is not the case in this appeal.
7. Therefore, in the absence of any suitable mechanism to secure the provision of the appropriate mitigation in this case, I cannot be certain that the appeal scheme, in combination with other development, would not adversely affect the integrity of the Solent Coastline SPAs. In these circumstances, acting in accordance with the precautionary principle, I find the appeal scheme unacceptable in relation to this issue and contrary to Core Strategy policy CS22. Given the sensitivity of the SPAs, their European protection along with the protection within the hierarchy of designated sites in the Framework, I give significant weight to the harm arising from the potential for likely significant adverse effects.

Character and Appearance

8. In determining the previous appeal proposal¹ at this site the Inspector considered that the *proposed two storey dwellings would be out of keeping with the character and appearance of the area because of their height, scale, form and layout*, noting that they would appear as out of scale with the majority of bungalows in Lime Close.
9. The current appeal scheme proposes two dwellings of a similar siting to the previous proposal but their height and scale has been reduced. Utilising the sloping site, the dwellings would appear as single storey in height from the front and two storeys in height from the rear. The ridge lines and overall massing of the dwellings would be significantly reduced from the previous proposal which would result in the development relating more sympathetically in appearance with the existing properties in Lime Close and impinging less on the views towards the Greenway from Lime Close.

¹ APP/D1780/A/14/2225646

10. The previous appeal Inspector went on to observe that *the area of hardstanding to provide access parking and manoeuvring space would further detract from the streetscene because of its extent and stark appearance, the impact of which would be difficult to screen satisfactorily with soft landscaping.*
11. In this respect the appeal scheme proposes to utilise a *grasscrete* system to soften the appearance of the driveway and parking areas at the front of the proposed dwellings. The appellant states that the soft landscaping of the site now proposed covers more than 50% of the site, though the Council in its appeal statement considers the total site coverage of buildings and other hardstanding to be more than 50%, thereby conflicting with the Residential Design Guide in this respect. Notwithstanding this disagreement between the parties, numerical measures such as this, whilst providing a broad guide, are generally crude methods of assessing the acceptability of a development.
12. The use of grasscrete in the construction of the driveway and parking areas could help to soften its appearance, provided it is properly maintained, although not in the same way as a more established area of landscaping. I note there is currently an existing area of hardstanding adjacent to the proposed access to the site which is currently visible in the streetscene. The proposal includes, albeit fairly limited, areas of landscaping at the front and sides of the proposed dwellings including an area along the site boundary adjacent to the head of the cul-de-sac.
13. The Inspector in dismissing the previous appeal, had several concerns which resulted in the finding of harm to the character and appearance of the area including the height, scale and form of the proposed dwellings. As set out above, the reduction in height of the dwellings would assimilate their built form sympathetically into their surroundings resulting in a much less visually intrusive development than previously proposed. Their reduced massing and revised design would also overcome the Inspector's concern raised regarding their monolithic and bland appearance. In the absence of harm from the other elements of the proposal which were previously considered to be unacceptable, I do not consider in this case that the extent of the driveway and parking area at the front of the dwellings is a matter which considered alone would result in significant harm to the character and appearance of the area.
14. In conclusion on this issue, the development would not result in any significant impacts upon the character and appearance of the area. It would accord with the design aims of policy CP13 of the City of Southampton Core Strategy (amended March 2015), policies SD1, SDP7 and SDP9 of the City of Southampton Local Plan Review (amended March 2015) and the Residential Design Guide.

Other matters

15. The previous appeal Inspector found harm in relation to the overbearing appearance of the scheme upon 3 Lime Close. However, given the reduction in the height and massing of the proposed dwellings, this concern would be overcome by the current proposal.

Conclusion

16. Although I have concluded that the proposal would be acceptable in terms of its effects on the character and appearance of the area, this would be

outweighed by the harm I have identified in relation to its effect on the Solent Coastline Special Protection Areas.

17. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

David Cliff

INSPECTOR