The Planning Inspectorate

Appeal Decision

Site visit made on 20 May 2014

by Nick Fagan BSc(Hons) DipTP MRTPI

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

Decision date: 18 June 2014

Appeal Ref: APP/W1715/A/14/2215139
39 Nightingale Avenue, Eastleigh, Hampshire SO50 9JS

- 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 & Mrs Chris Jenman against the decision of Eastleigh Borough Council.
- The application Ref F/13/73273, dated 6 September 2013, was refused by notice dated 30 October 2013.
- The development proposed is the erection of 1 No 3-bedroom dwelling on land adjacent to 39 Nightingale Avenue.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
   (a) The effect of the proposal on the character and appearance of the area,
   (b) Whether adequate refuse and cycle storage facilities can be provided for the existing house at No 39, and
   (c) Whether there is a legitimate requirement for various financial contributions towards public infrastructure and other facilities and if so, whether these have been made.

Reasons

Character and Appearance

3. The site is the side garden of No 39, which is bounded by a hedge adjacent to Raven Square, a large rectangular area of open space characteristic of the Aviary Estate. The Estate is a post-war suburban residential area comprising predominantly semi-detached and terraced two-storey houses.

4. Between Woodpecker Way and Raven Square are three pairs of two-storey semi-detached houses – Nos 29-39 (odd) Nightingale Avenue – with garages to the rear accessed from their frontages, although the garage at No 39 has been demolished. The plots of Nos 29 and 39 lie adjacent to Woodpecker Avenue and Raven Square respectively and these plots are wider than the other houses in this row, which is also a characteristic of corner houses on the Estate. Although constructed as symmetrical pairs of houses with a common building line, No 29 has been altered by a two-storey hipped roof front extension and an additional dummy pitched roof single-storey side extension. The neighbour

at No 37 also has a similar two-storey hipped front extension, which unbalances the symmetry of Nos 37 and 39.

5. Although the first part of the new dwelling's front wall would be set back from No 39's front building line its main bulk would project forward in a similar fashion to that of the original central front projections of Nos 37 and 39. Whilst this may be acceptable, the way in which it is proposed is not because of the design of the roof. A hipped roof is proposed to the new dwelling leaving No 39's hipped roof intact. By linking the existing and new houses together at first and second floor level a terrace is created but the design is only partially resolved because the dwellings are not linked at roof level.

6. This would give the street elevation an incongruous and alien appearance at odds with the extensions built at Nos 37 and 29, whose roofs tie into the existing pitched roofs. This element of the proposal would constitute poor design, and such poor design would be prominent because of the site's location on the main road running through the Estate and because it is a corner plot, which is also elevated above the road level.

7. I am also concerned that, were such a design to be allowed, the Council would find it difficult to resist such unsuitable roof designs on other corner houses or other prominent sites in the vicinity.

8. I have taken full account of the appellants' representations[1] including noting the examples of recent infill dwellings in the area as well as my observations of these and other infill dwellings during my visit. Rather than justifying the proposal the examples given by the appellants and those I observed during my visit only serve to indicate that the design of the proposal would fail to take account of the context of the site or the design of the existing host dwelling. I note that the appellants concede in their Grounds of Appeal that the design of the proposed roof *"is not a good design"* and I agree with this statement. The area is designated as a Special Policy Area because of its design qualities; the proposal fails to respect the design qualities of the Aviary Estate because of the incongruous design of its roof as set out above.

9. For these reasons I conclude that the proposal would seriously harm the character and appearance of the area. It would therefore fail to comply with 'saved' Policy 59.BE of the Eastleigh Borough Local Plan Review (2001-2011) (LP), which requires high quality design taking full and proper account of the site context, amongst other matters. It would conflict with LP Policy 183.LB because its inappropriate and incongruous design would adversely affect the setting of the adjacent open space at Raven Square, which this Policy seeks to protect. It would also fail to comply with the guidance requiring good design in paragraph 17 and Section 7 of the National Planning Policy Framework (NPPF).

Refuse and Cycle Storage

10. The Council's second refusal reason is concerned that insufficient information has been provided to demonstrate that bin and cycle storage can be provided for the existing house at No 39 or that the provision of such on its frontage would not harm the street scene.

[1] including their *Study of the Buildings of Nightingale Avenue* & details of the *Starling Square Application F/06/57234*

11. Given that the proposed development would land-lock the rear garden of No 39 it is reasonable that the proposal should explain how, preferably, access is to be gained to refuse and cycle storage in its rear garden from Raven Square, or in the alternative be sited on its frontage in an acceptable and appropriate way in accordance with LP Policies 28.ES and 59.BE.

12. The proposal does not do this and so is contrary to these Policies, although not to LP Policy 104.T which is solely concerned with vehicle parking. These details should have been provided upfront as part of the application because if the Council required them by a condition it may find itself in a situation where it was obliged to agree to refuse and cycle storage at the front of the property when it considers that access to such storage in the rear garden would be the acceptable solution.

Requirement for Financial Contributions

13. The Council's third refusal reason is concerned with the failure of the appellants to undertake the payment of financial contributions towards the provision of community infrastructure, off-site public open space and sustainable transport. The Council claims the development proposed will result in an increased demand for such infrastructure and facilities.

14. LP Policy 101.T requires that development which results in additional traffic on local roads will be subject to the provision of contributions towards the implementation of the Local Transport Plan and/or other transport proposals set out in the Plan. LP Policy 147.OS requires contributions towards off-site open space provision or towards improving equipment/facilities on sites in the locality. LP Policy 191.N states the Council's general requirement that development proposals make provision for the infrastructure, services, facilities and amenities made necessary by it.

15. The Council's *Planning Obligations Supplementary Planning Document (adopted July 2008)* (SPD) provides detail and guidance on these requirements, including the specific requirements for transport, open space and other community infrastructure, and Appendix 1 of the Council's appeal statement explains the particular requirements flowing from this proposal.

16. Regulation 122 of the *Community Infrastructure Levy Regulations 2010* requires that planning obligations under Section 106 of the Act must pass three tests, as does paragraph 204 of the NPPF. These are: that the obligation is 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 proposed.

17. New residential development including that proposed leads to increased demand for road and public transport infrastructure, public open space and play provision, and other community infrastructure such as libraries, health facilities and the like. Hence such an obligation is necessary in order to ensure this residential development is properly serviced by such facilities and infrastructure.

18. In terms of the transport contribution, the documents listed in paragraph 3.2 of the SPD or similar documents updating them and SPD Appendix 5.1 provide for contributions towards sustainable transport measures, to include improvements to existing footway and cycleway infrastructure and public transport

infrastructure and services across the Borough. Appendix 1 of its appeal statement lists the appropriate local junction improvements and/or cycle network improvements near the site. This contribution would therefore be directly related to the development.

19. In terms of the public open space and play provision contribution, the Council is committed to rectify deficiencies in all areas of the Borough in accordance with the methodology set out in SPD paragraph 3.3 and Appendices 5.1 and 5.6 and this contribution would therefore be directly related to the development, as set out in Appendix 1 of the Council's appeal statement. Likewise, SPD paragraph 3.4 and Appendix 5.1 sets out the Borough wide requirement for other community facilities, and so this contribution would also be directly related to the development.

20. The SPD and its background paper setting out the basis for calculating formulae and standard charging per residential unit explain how the contribution would be fairly and reasonably related in scale and kind to the development proposed, and so the obligation would meet the requirements of this third test.

21. I understand that the appellant agrees in principle for the need for such financial contributions. However, no agreement or undertaking has been received providing for such an obligation, and I conclude that the proposal fails to make adequate provision towards public infrastructure and other facilities. It therefore fails to comply with LP Policies 101.T, 1.47.OS, and 191.N, the SPD and the NPPF.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

Nick Fagan

INSPECTOR