The Planning Inspectorate

Appeal Decision

Site visit made on 16 April 2014

by John D Allan BA(Hons) BTP MRTPI

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

Decision date: 3 June 2014

Appeal Ref: APP/W1715/A/14/2213113
Heathermount/Ardullie Lodge, Moorhill Road, West End, Hampshire SO30 3AW

- 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 Horne and Dr Hawtin against the decision of Eastleigh Borough Council.
- The application Ref F/13/73412, dated 9 October 2013, was refused by notice dated 22 November 2013.
- The development proposed is erection of 2 dwellings.

Application for Costs

1. An application for costs was made by the appellants against the Council. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted for erection of 2 dwellings at Heathermount/Ardullie Lodge, Moorhill Road, West End, Hampshire SO30 3AW in accordance with the terms of the application, Ref F/13/73412, dated 9 October 2013, subject to the conditions set out in the attached schedule.

Procedural Matter

3. The Council's decision notice makes reference to the Revised Draft Eastleigh Borough Local Plan 2011-2029. This has been superseded by the Revised Pre-submission Eastleigh Borough Local Plan 2011-2029 dated February 2014 although for the purpose of this appeal the 2 relevant policies that have been referred to by the Council in the decision notice remain unaltered.

Main Issues

4. The main issues are the effect of the proposal on (i) the character and appearance of the area; (ii) the living conditions at neighbouring properties 43 to 51 Southern Road, with particular regard to visual impact; and (iii) the need for contributions towards the provision of community infrastructure, off-site open space works and sustainable transport.

Reasons

Character and Appearance

5. Private residential gardens are excluded from the definition of previously developed land contained within the National Planning Policy Framework (the Framework). However, paragraph 53 of the Framework states that it is any such development that would be inappropriate that should be resisted and neither the Framework nor the policies of the development plan specifically preclude the development of private gardens.

6. The Council has argued that a predominant characteristic of the area is a fairly regular, grid based pattern of residential development with most properties facing their road frontage. However, whilst this may be true along some local roads, Southern Road for example, it is not a strongly defining characteristic that I recognise for the area more generally. During my visit I saw that elsewhere there is a much less obvious arrangement to the placing of some dwellings, including a number of notable examples where properties are positioned behind others being accessed via private driveways, for example at Well House immediately to the rear and east side of Ardullie Lodge and to the east of that a development of 3 houses at Beacon Mews. These show that the more random placement of dwellings also forms part of the area's wider character and, when also combined with some significant roadside tree cover that masks the location of some dwellings, indicates that they can be successfully assimilated into this location.

7. The first plot would sit to the side and forward of Heathermount. The most forward part of the development would align with the side elevation of 51 Southern Road to the west and with the property known as 'Kells House', which is to the east side of Ardullie Lodge. It would be set back from the frontage to Moorhill Road by a significant distance and behind a belt of mature shrubs and trees that are covered by Tree Preservation Orders. In light of this the development would be largely inconspicuous from the public realm along Moorhill Road, even for the most part during winter months due to the density of the vegetation, with the site's verdant frontage retained. As a consequence the form and layout of this plot, together with its visual relationship with Heathermount, would have little impact on the character and appearance of Moorhill Road.

8. For these same reasons the tandem nature of the proposed dwellings would not be evident from Moorhill Road despite the clearance of significant amounts of vegetation within the site, particularly as the existing access would be largely unaltered.

9. Each of the dwellings would be set within reasonable sized and landscaped plots that would be comparable to others nearby and not atypical for the area. The spacing of the properties between themselves and with other buildings would reflect that between some other nearby and neighbouring dwellings such that they would not appear cramped within their setting or represent an overdevelopment of the appeal site.

10. Although a number of trees and fairly significant amounts of vegetation would be lost, I share the Council's view that these have fairly low amenity value in themselves. The appellants' *Arboricultural Implications Assessment and*

Method Statement, dated October 2013, details the retention and protection of those trees with highest amenity values, including a fine specimen of a False Acacia (T16). These works could be secured by condition.

11. Overall, the proposal would represent an efficient use of this land in a form that could be successfully assimilated into the grain of development within the area and without detracting significantly from its verdant qualities. As such there would be no material conflict with saved Policy 59.BE of the Eastleigh Borough Local Plan Review (2001-2011) (EBLPR) or with the aims and objectives of Policy DM1 of the Revised Pre-submission Eastleigh Borough Local Plan Review (2011-2029) (RPEBLPR), the guidance within the Council's *Quality Places* Supplementary Planning Document 2011 (SPD), or with the Framework.

Living Conditions

12. The appeal site extends along the foot of the rear boundaries to the gardens at Nos 43–51 (odd) Southern Road. According to the Council the depth of these neighbouring gardens varies from between 19m to 29m. Each property has various outbuildings and garden facilities within these gardens and presently faces towards dense vegetation beyond their rear boundaries and which extends into the appeal site but with the exception of No 43 where the vegetation at the foot of the appeal site noticeably thins.

13. The spatial separation between the proposed dwellings and the rear elevations of the properties in Southern Road would far exceed the Council's normal guidelines that are contained within their *Quality Spaces* SPD insofar as it requires a minimum distance of 12m between main living room windows and new buildings for achieving privacy, daylight and sunlight within respective buildings.

14. Each new dwelling would be set around 2m away from the site's western boundary and each would occupy space principally at the foot of the gardens to 45 and 49 Southern Road. I recognise that the buildings would represent a significant change to the verdant aspect that can be directly had from the rear outlook to these properties and from their private gardens, and more obliquely from Nos 43, 47 and 51. However, due to the tall and dense vegetation screen that exists to the foot of most of these properties, there is already a fairly strong degree of enclosure to the outlook in this direction such that openness is not a significant or defining feature of the area.

15. Moreover, the buildings would be of reasonably modest scale, being designed as chalet style dwellings with the first floor contained within the roof space, with the mass of each to be fairly well broken by their pitched roof forms with reasonable degrees of articulation and detachment from the lower, single-storey scale of each adjacent garage. Both properties would be seen from the neighbouring plots as appropriately designed dwellings within a wider suburban context. In addition, I saw from the rear of Nos 49 and 51 that there are some reasonably significant amounts of mature vegetation that sits within and at the foot of these gardens, and to some others adjacent. This would be unaffected by the proposal, as would other mature trees that can be seen in the further background beyond the site and which would retain their visual impact upon the area.

16. I can understand the concerns of the Council and those of the adjoining residents over the change to the view from the rear of these properties. But overall I find that the proposed dwellings would not be visually harmful and that they would not impose a degree of enclosure at the foot of these gardens that would be unacceptably overbearing or intrusive. Although there would be a large amount of vegetation lost there would not be a blanket removal and each new dwelling would be seen within mature, landscaped surroundings.

17. Windows at first floor levels that would face the properties in Southern Road would be limited to one in each dwelling and would be set flush within the sloping roofs, each serving an en-suite bathroom facility. It would be possible to control the outlook from these windows by condition to ensure that there would be no unacceptable overlooking, perceived or otherwise, towards neighbouring gardens and dwellings.

18. Overall, for the reasons given I find that there would be no impact upon the living conditions of any adjoining occupiers that would be unacceptable. Accordingly there would be no conflict with EBLPR Policy 59.BE or with RPEBLPR Policy DM1 in this regard.

Community Infrastructure, Off-Site Open Space Works and Sustainable Transport

19. The Council considers that financial contributions are required towards the provision of community infrastructure, open space and sustainable transport in the local area. The appellants have submitted a Unilateral Undertaking (UU) pursuant to S106 of the Town and Country Planning Act 1990 dated 26 February 2014, which, in the event that I find the contributions to be necessary and justified, requires contributions of £4461.37 towards community infrastructure provision, £7755.21 towards off-site public open space (POS) and play provision, and £12998.76 towards sustainable transport provision, these sums being based on guidance and tariffs that are set out in the Council's *Planning Obligations* SPD, adopted in 2008.

20. EBLPR Policy 191.IN indicates that arrangements should be made for the improvement or further provision of infrastructure and facilities made directly necessary by a development. Policy 147.OS requires contributions towards public open space provision or improvements on sites in the locality. LPR Policy 101.T indicates that development resulting in additional traffic on the local road network greater than targeted levels will only be permitted if there is a proven need for the development and contributions are provided towards the implementation of the Local Transport Plan or other proposals in the EBLPR.

21. Although not referred to in the decision notice the Council has also drawn my attention to RPEBLP Policies DM32 and DM23. These together with Policy DM37 contain further requirements relating to funding infrastructure, recreational and open space facilities, and transport.

22. Overall, the policy requirements for seeking contributions where they are necessitated by any development are broadly consistent with the statutory tests of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and Paragraph 204 the Framework. These confirm that an obligation should only be sought if it makes the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development.

23. In relation to community infrastructure the Council states that there is no surplus of existing facilities within the local area and that all new developments need to deliver the necessary community infrastructure demands that are likely to arise as a result of the development. They further state that in this case the contribution would be most appropriately used towards community infrastructure schemes at Hilldene Community Centre and Youthouse at Moorgreen Road Recreation Ground, being projects agreed by the Council's Hedge End, West End and Botley (HEWEB) Local Area Committee. However I have been provided with no up-to-date assessment of current levels of deficiencies or specific improvement works as they relate to these projects. There is no clear explanation as to how much money would be spent or upon what with regard to this particular case.

24. In relation to POS and play provision the Council requires all residential developments to make a basic level of contribution to existing open space enhancements. On top of this the Council argues that of the schemes agreed by the HEWEB Local Area Committee the development would be required to contribute towards the provision of new district park/playing field facilities and improvement works to 2 local green spaces at Telegraph Woods and Itchen Valley Country Park. Again however, there is no up-to-date assessment of current levels of deficiencies or specific improvement works as they relate to these projects. There is no clear explanation as to how much money would be spent at these locations or upon what with regard to this particular case.

25. Therefore, even if a need for these contributions is directly related to the development, based on the information before me I cannot be certain that the levels of the contributions requested for community infrastructure and POS and play provision are reasonably related to it in scale and kind.

26. For sustainable transport provision the Council has an adopted formula derived from the known cost of providing transport infrastructure required to serve new development. The monies would be used to minimise the need for people to travel by private car; improve accessibility; improve provision for cycling and walking; and improve the public transport system with the objective of achieving road traffic reduction targets. I can understand how in each case further need for investment arises and I have also been directed to 3 specific schemes in the immediate proximity of the appeal site for road improvement works. On this basis I consider that sufficient justification exists to demonstrate that these contributions are in line with the necessary statutory tests.

27. Overall, from the evidence that is available to me I find that only the contributions that relate to sustainable transport appear to meet the CIL Regulations and therefore I have only taken this element into account in reaching my decision.

28. Over and above this the Council has argued that the contributions could not be secured via the appellants' UU as it was not signed by a third party who has an interest in land over which access to the appeal site would be gained. However the payments, as outlined within the UU, have already been made to the Council who in turn have confirmed that they have accepted the monies upfront. Although the form of the UU is not ideal it clearly identifies the relevant application proposal and given also that the obligation is for a one off

payment (and one that has been secured) with no on-going obligations, I am satisfied that it is appropriate to deliver what is required.

Other Matters

29. I have carefully considered concerns that have been expressed about highway safety along this stretch of Moorhill Road and I have made particular note of a tragic accident that fairly recently occurred at its junction with Southern Road, just a very short distance from the access to the appeal site.

30. The access to the appeal site is already provided with good visibility to the right hand side upon exit onto the main road and adjacent to the nearside carriageway. Furthermore, it is positioned approximately 60m beyond Southern Road and that much further from what I saw to be a fairly blind summit but which itself is some reasonable distance to the other side of the junction with Southern Road.

31. There are suggestions that in the opposite direction visibility is unacceptably restricted. However, vegetation to the back edge of the footpath is contained behind a close-boarded fence for some distance and I saw that, due to the straight alignment of the road that there was clear inter-visibility between vehicles emerging from the access and those approaching from this direction. Therefore, although there would be an increased number of vehicles using the access, there is no substantive evidence to suggest that there are any serious shortcomings with the existing arrangement or that any additional usage would have an unacceptable impact upon existing conditions as they relate to highway safety. Whilst the access is of insufficient width at its point of intersection with the main road to allow 2 cars to pass, there is scope for this manoeuvre just a short distance into the land such that I am not persuaded that the free flow or safety of traffic along Moorhill Road would be affected. I note also that these findings are consistent with the advice of the Council's Head of Transportation and Engineering.

32. There is no evidence to support an argument that the proposal would unacceptably impact upon any wildlife habitats in the area. Matters relating to land ownerships are not directly relevant to the planning merits of the case.

Conclusions

33. For the reasons given I find that there would be no impact that would be harmful to the character or appearance of the area or that would unacceptably harm the living conditions of any adjoining occupiers. I also find that contributions made, insofar as they relate to sustainable transport initiatives, are properly justified and reasonably related to the development in scale and kind. Therefore, and having regard to all other matters raised, the appeal is allowed.

Conditions

34. The Council has suggested a list of conditions. I have considered these against the advice within the national Planning Guidance. In some instances I have varied the wording of the suggested conditions to more closely reflect the guidance and model conditions.

35. For the avoidance of doubt and in the interests of proper planning it is necessary to impose a condition requiring that the development is carried out in accordance with the approved plans. In order to safeguard the character and appearance of the area it is necessary to ensure that tree protective barriers are installed and appropriately retained on the site, although details of their design and positions are shown within the appellants' *Arboricultural Implications Assessment and Method Statement* and therefore no further specific details in this regard are required. For the same reason I shall impose conditions relating to the external materials of construction, proposed levels, boundary enclosures and further landscaping details given that those shown on the Landscape Proposals Plan are sparse. However, the plans include an existing site survey that shows trees along the front boundary with Moorhill Road and therefore no further details of these are necessary.

36. In order to safeguard the amenities of adjoining occupiers it is necessary to control hours of construction work and deliveries. For the same reason it is necessary to control the windows to the elevations of the dwellings facing towards Southern Road however I note that the Council's suggestion for these windows to be top opening only would negate any benefit from them being obscurely glazed. I have therefore altered the wording of this condition accordingly.

37. For reasons relating to highway safety it is necessary to ensure that the parking and turning areas are properly provided. Details of sustainable surface water and foul sewage are necessary in order to comply with the Council's policies on such matters, as are details for achieving Level 4 of a Code for Sustainable Homes.

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: 1570/12 01, 1570/12 02 Rev D & MPN HMAL Rev A.

3) The development shall be implemented in accordance with the *Arboricultural Implications Assessment and Method Statement* by ecourban Limited, dated October 2013, Ref 13439-AIA 3. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the details shown on the Revised Tree Protection Plan ECO 3 before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.

4) The development shall not start until a Method Statement has been submitted to and approved in writing by the local planning authority.

The development shall be carried out in accordance with the approved Method Statement which shall include:

a) The location of temporary site huts, storage of construction materials and plant storage areas;
b) The parking of vehicles of site operatives and visitors;
c) Measures to control the emission of dust and dirt generated;
d) Measures to prevent mud and dust on the highway.

5) Notwithstanding the details shown on Drg No MPN HMAL, no development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include trees being retained and new trees and planting including species and planting times; proposed finished levels or contours; and means of enclosure. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.

6) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

7) The development shall not start until details of the sustainable disposal of surface water and foul sewerage for the dwellings have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

8) The dwellings shall achieve Level 4 of the Code for Sustainable Homes. The dwellings shall not be occupied until a final Code Certificate has been issued for them certifying that Code Level 4 has been achieved.

9) Construction works and deliveries to the site shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0900 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.

10) The dwellings hereby permitted shall not be occupied until the parking areas and garages have been provided in accordance with the approved plans. Thereafter they shall be permanently retained and used only for the purpose of accommodating private motor vehicles incidental to the use of the dwellings as residences.

11) The dwellings hereby permitted shall not be occupied until turning areas have been provided in accordance with the approved plans. The turning areas shall subsequently be retained and kept available for such purposes at all times.

12) The first floor windows on the north west side elevations of the dwellings hereby permitted shall either be: a) obscure glazed to Pilkingtons level 3 or equivalent and fixed shut; or b) positioned at least 1.7m above the floor of the room in which they are installed. The windows shall thereafter be maintained accordingly.

13) No additional or altered windows shall be constructed in the north west side elevations of the houses hereby permitted.

John D Allan

INSPECTOR