The Planning Inspectorate

Appeal Decision

Site visit made on 7 November 2011

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 22 November 2011

Appeal Ref: APP/W1715/A/11/2156058
17 Hazel Close, Chandler's Ford, Eastleigh, S23 5RF

- 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 Wickborne Homes and Developments Ltd against the decision of Eastleigh Borough Council.
- The application Ref: F/10/68252 dated 2 December 2010, was refused by notice dated 18 May 2011.
- The development proposed is "form a pair of semi-detached houses".

Decision

1. The appeal is allowed and planning permission is granted for a pair of semi-detached houses at 17 Hazel Close, Chandler's Ford, Eastleigh, S23 5RF, in accordance with the terms of the application, Ref: F/10/68252 dated 2 December 2010, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The 4th reason for refusal states that the proposal fails to make contributions towards the provision of community infrastructure, off-site open space and sustainable modes of transport. Subsequently the appellant has submitted a signed and dated Unilateral Undertaking on these matters and the Council is satisfied with its provisions. However, it remains necessary to consider whether it meets the tests in *Circular 05/2005* on Planning Obligations and the provisions of the *Community Infrastructure Levy (CIL) Regulations 2010* so that appropriate weight can be given to it in my reasoning and decision.

3. The Council is satisfied that the information submitted in the Assessor's Report for Sustainable Homes demonstrates that the proposal meets all the necessary requirements of its Supplementary Planning Document: *Environmentally Sustainable Development* (SPD). Accordingly it wishes to withdraw the 3rd reason for refusal. I too find no reason to disagree with the professional findings in the Assessor's report, and am satisfied that Code Level 3 provision is achievable.

Main Issues

4. Therefore, I consider the three main issues in this case are:

   - The effect of the proposal on the character and appearance of the area.
   - The effect of the loss of trees on the character and appearance of the area.

- The effect of the proposal on the provision of off-site community infrastructure, public open space and sustainable modes of transport; whether the financial contributions provided have been justified; and the weight to be attached to them.

Reasons

5. The appeal site comprises part of the large side/rear garden of No 17. Recent amendments to Planning Policy Statement 3: *Housing* (PPS3) now exclude private gardens from the definition of previously developed land, and the former presumption in favour of development no longer applies. The reference to target densities was also removed and replaced with the objective of achieving densities in keeping with local character. These are material considerations to be taken into account in determining planning applications and I note what the parties have to say on the matter. However, whilst garden land is no longer a priority for development, the changes to PPS3 do not preclude applications relating to garden land being considered on their own merits. Nonetheless, PPS3 also says development should complement the area in terms of layout, scale and density. This remains an important consideration.

Character and Appearance

6. The appeal site lies within the 'urban edge' of Chandler's Ford where, notwithstanding other considerations, the Council says residential development is acceptable in principle. It is proposed to erect a pair of semi-detached dwellings roughly in line with No 17 and its neighbour and similar is scale and style. An existing attached single garage would be demolished to enlarge the access area and three new garages erected. Two of these would serve the proposed dwellings and are shown as a pair in the northwest corner of the site. A new attached single garage would serve the host dwelling.

7. Policy 59.BE of the Eastleigh Borough Local Plan Review 2001-2011 (LP) requires development proposals to take account of the context of the site and the character and appearance of the neighbourhood, including relationship to adjoining buildings, spaces and views, natural features and trees worthy of retention.

8. The surrounding area is characterised by typical modern residential estate development, principally taking the form of fairly closely-spaced semi-detached dwellings set back from the road behind modest front gardens. Nonetheless the area is still reasonably open and spacious in character and appearance.

9. Due to its corner position, the garden of No 17 is uncharacteristically large in relation to others in Hazel Close. In this context, and on balance, I find the proposal would not be materially harmful in terms of the rhythm and spacing of dwellings the Close, or detract from the area's character. Nor do I consider the site layout and disposition of dwellings would appear unacceptably cramped or significantly at odds with the grain of surrounding development. The plot sizes are sufficiently generous in my view to allow for adequate outdoor amenity space both to front and rear, and although No 17 would be left with a modest-sized rear garden, this would nonetheless be commensurate with the size of other gardens in the surrounding area.

10. Although I share some of the Council's concerns regarding the visibility of the proposed parking area and garages from the site frontage, the site is tucked into a corner of the cul-de-sac and I do not consider they would appear

unacceptably prominent in this position. Indeed, this part of the site is already dominated by the existing pair of garages and the hard-surfaced forecourt.

11. I therefore conclude on this issue that the proposal would not materially harm the character and appearance of the surrounding area. As such, I find no conflict with LP Policy 59.BE.

Trees

12. The site contains a number of trees subject to a Tree Preservation Order (TPO), and the proposal would result in the direct loss of three of these: a multi-stemmed silver birch tree close to the centre of the site and two other birch trees close to the northern boundary. Other, smaller ornamental trees (not included within the TPO) would also be felled, although these garden trees have only a modest impact in terms of the wider character and appearance of the area.

13. The multi-stemmed silver birch is in poor health and therefore, although it is an attractive and distinctive specimen, I have no objections to its removal. This view is shared by the Council's Arboricultural Officer. Consequently, the main area of dispute between the main parties relates to the two other birch trees. With respect to the Council's case, I conclude that although their loss would have an immediate detrimental effect on the on the visual amenity of the area, this would be tempered by the retention and protection during construction of other trees and by the proposed planting of three replacement trees on the east boundary. Furthermore, the birches are seen against the background of the existing boundary hedge and the canopy of other mature tree canopies beyond (outside the site). Apart from the birch in the northwest corner which can clearly be seen from the Close, the other trees are only readily visible within the garden and from neighbouring properties. To my mind their contribution to the wider character of the area and the public realm in general is not so significant as to justify refusal of permission for this reason alone.

14. Therefore, subject to the imposition of conditions to cover new planting and the protection of retained trees, I conclude on this issue that the loss of these trees would not materially harm the character and appearance of the area. I find no conflict with LP Policy 59.BE (i) and (iv).

Contributions - Unilateral Undertaking

15. Circular 05/2005 and the CIL Regulations require that an obligation must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related to it in scale and kind. The Council has referred to LP Policies 101.T, 147.OS, and 191.IN, and a Supplementary Planning Document: *Planning Obligations*. Having regard to the representations made and the content of the Unilateral Undertaking (UU) which has now been submitted, I am satisfied that the appropriate LP policy and legal tests referred to above are met. In these circumstances, I consider the Council's original objections concerning the absence of a suitable legal undertaking have been addressed, and I afford the UU substantial weight.

Other Matters

16. I note the comments of neighbouring residents with regard to overlooking, loss of privacy, and other residential amenity issues. However, I consider that the layout and the design of the proposed dwellings and associated garden areas

will ensure that no unacceptable harm would occur to the amenities currently enjoyed by the occupiers of neighbouring dwellings.

17. I am also aware of the many concerns raised with regard to the adequacy of the parking arrangements and possible congestion and conflict arising from additional traffic. Nonetheless the Council's Transport Unit have no objections to the proposed access, parking provision and manoeuvring arrangements, and I find no reason to disagree with that professional assessment.

Conditions

18. I have considered the conditions put forward by the Council in the light of the advice in Circular 11/95. In addition to the 3 year period for commencement a condition is needed to secure compliance with the submitted plans for the avoidance of doubt and in the interests of proper planning. Conditions requiring the submission and approval of materials and details of replacement tree planting are necessary in the interests of the appearance of the area. However, I have extended the scope of the suggested replacement tree planting condition to require the submission and implementation of a full landscaping scheme. This is necessary as full details are not shown on the submitted plans. I have also imposed a condition to ensure that retained trees are protected during construction work.

19. I agree that a condition is needed to ensure that the proposed garages and parking spaces are kept available for the parking of cars, to ensure adequate on site parking. The condition requiring the submission and implementation of details for the disposal of foul sewage and surface water is necessary to ensure satisfactory provision of drainage at the site.

20. A condition requiring the development to achieve Level 3 of the Code for Sustainable Homes is reasonable, and would accord with the SPD and LP Policy 34.DS. However, I prefer a single simpler condition rather than the two suggested by the Council.

Conclusion

21. In arriving at my decision I have also regard to the *Draft National Planning Policy Framework Document*, issued for consultation in July 2011. However, as this document is still in draft form and subject to change, I have afforded its policies little weight.

22. I have considered the representations made by local residents objecting to the proposal for reasons of over-development and 'garden grabbing', loss of trees, loss of privacy, additional traffic and parking pressures, overlooking, and noise and disturbance during the construction period. Whilst I note these and other concerns, none is sufficient to alter the considerations that have led to my decision.

23. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Nigel Harrison

INSPECTOR

Schedule of Conditions:
Appeal Ref: APP/W1715/A/11/2156058
17 Hazel Close, Chandler's Ford, Eastleigh, S23 5RF

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby approved shall be carried out in exact accordance with the following approved plans: 10/1663/SO1 Rev B; 10/1663/PO1; 10/1663/PO2 and 10/1663/PO3.

3) 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. The development shall be carried out in accordance with the approved details.

4) The development hereby approved shall achieve minimum Level 3 of the Code for Sustainable Homes or alternative as agreed in writing by the local planning authority. No dwelling within the development shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

5) 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 the size, species and location of three replacement trees.

6) 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.

7) If within a period of five years from the completion of the development, any of the trees or plants that form part of the approved details of soft landscaping die, are removed or become seriously damaged or diseased, then they shall be replaced in the next planting season with others of similar size and species.

8) In this condition 'retained tree' means an existing tree to be retained in accordance with the details shown on the approved plans and Arboricultural Method Statement.

   (i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the particulars shown on the approved plan without the prior written approval of the local planning authority. Any topping or lopping shall be carried out in accordance with British Standard 3998 (Tree Work) or any other British Standard replacing,

   (ii) If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

(iii) No development shall take place and no equipment, machinery or materials shall be brought onto the site for the purposes of the development or demolition works until (a) precise details and a specification of the fencing for the protection of any retained tree has been submitted to and approved in writing by the local planning authority; and (b) the erection of protective fencing has been undertaken in accordance with the approved details. The fencing shall be retained until all equipment, machinery and surplus materials have been removed from the site.

9) Neither of the dwellings shall be occupied until works for the disposal of foul and surface water have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.

10) Neither of the dwellings shall be occupied until the garages, parking spaces and turning area have been provided in accordance with the details shown on the approved plans, and these garages, parking spaces and turning area shall not be used for any purpose other than for the parking and manoeuvring of motor vehicles.

(End of Conditions)