



Appeal Decision

Site visit made on 4 December 2023

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/W1715/W/23/3320124

49 Bishopstoke Road, Bishopstoke, Hampshire, SO50 6BF

- 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 Mrs Jane Bray against the decision of Eastleigh Borough Council.
 - The application Ref F/22/94046, dated 21 October 2022, was refused by notice dated 20 January 2023.
 - The development proposed is a two-bedroom dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against Eastleigh Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. I have used the postcode given on the Decision Notice and the appeal form in the banner heading above as this appears to be more accurate.

Main Issues

4. The main issues are:
 - the effect on the living conditions of occupiers of the host property No 49;
 - the effect on the character and appearance of the locality;
 - whether satisfactory living conditions would be provided for future occupiers of the proposed dwelling;
 - flood risk; and
 - the effect on the integrity of protected habitats and biodiversity.

Reasons

5. The appeal site is on a main route within the urban edge of Bishopstoke. This is defined as a larger village in the settlement hierarchy in the Eastleigh Borough Local Plan 2022 (the LP). It is an accessible location and there is no objection in principle to a dwelling provided other planning policies and material considerations are satisfied.

Effect on the living conditions of occupiers of No 49

6. The proposed dwelling would be in the rear garden such that its front wall would roughly be in line with the rear wall of No 49. The side wall would be about 8.6m long and would adjoin about half of the shared boundary. The overall height to the ridge of the proposed dwelling would be about 7.7m. A narrow path would separate the corners the buildings.
7. Due to its siting and scale the proposed dwelling would have a substantial bulk and mass along much of the shared boundary. It would cause a noticeable reduction in skylight received by all the rear windows and the terrace of No 49 and the height and length of the proposed side wall and roof would be over dominant and intrusive. It would create a gloomy and oppressive outlook for existing and future occupiers of that property. The barn hipped style roof and slightly lowered side eaves would do little to alleviate this.
8. Those standing on the proposed first floor rear balcony could directly face the side boundary and would have clear views of the rear part of the private garden of No 49. This would result in some loss of privacy for occupiers of that property.
9. For the above reasons I conclude that the proposal would have a harmful effect on the living conditions of existing and future occupiers of No 49. This would conflict with those parts of Policy DM1 of the LP, the Quality Places Supplementary Planning Document (SPD) and those principles of the National Planning Policy Framework (the Framework) that seek to ensure all new development should not have an unacceptable impact on the amenities of occupiers of neighbouring properties.

Character and appearance

10. The Bishopstoke Conservation Area (the CA) embraces the historic core of the village of Bishopstoke which is centred around the multi-channelled River Itchen and bounded by the Itchen Navigation. The character of the area is predominantly large houses within substantial plots that have been subdivided for development all closely associated with water courses and open spaces and interspersed with many trees and woodlands belts. No 49 is typical in having a relatively large garden with trees along the edge of a watercourse.
11. The busy Bishopstoke Road has no particularly notable buildings, aside from the Prince of Wales public house. The Itchen Navigation contributes to the landscape setting with a range of mature trees along its banks. The CA Appraisal identifies an important attractive view from Bishopstoke Road north along the Itchen Navigation near including across the side garden of No 49. I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
12. There is nothing wrong with the appearance and materials of the proposed dwelling at the end of a row of other twentieth century houses. It would be in the back garden of the host property, itself one of the more recent houses, and the plot would be sub-divided.
13. The building line along this stretch of Bishopstoke Road is irregular. The proposed dwelling would be well set back and would not be unduly prominent in views from Bishopstoke Road. It would be visible between the on-site trees from the footpath on the opposite bank of the Itchen Navigation. Although it

would be set in from the bank it would be significantly taller and wider than the garage it would replace although the ridge and eaves would be slightly lower than those of the host property. This would result in a loss of the open spacious character of the setting of the Itchen Navigation and views through to the woodland at the rear of the site would be interrupted. This would harm the character and appearance of the CA

14. A Tree Preservation Order protects the riverside belt of trees within the appeal site. These trees, some of which may date back to planting shown on an 1850s map, make a significant contribution to the wooded character and appearance of this part of the CA.
15. The riverside trees are very close to the Itchen Navigation. At the time of my visit, during and after a period of heavy rainfall, fast flowing water was touching/very close to the base of some of the trees. Some low hanging branches were partially submerged. Given the proximity to the water it seems to me that roots would rely more on land to the east of their trunks and would be more susceptible to damage from disturbance in the root protection areas (RPA). Six of the 26 trees are classified as of moderate quality in the Arboricultural Impact Appraisal and Method Statement August 22 (the AIA). The remainder are lower quality with a few dead stumps. Nevertheless, the riverside trees are an attractive feature which enhance the banks of the Itchen Navigation and the locality.
16. As stated in the AIA, predicting where the roots are would not provide reliable information given the proximity of the Itchen Navigation and nearby structures. The AIA recognises there would be encroachment into the nominal circular RPAs of a number of trees. The AIA initially proposed that for T13 heavy pruning would be necessary due to its structural condition so the notional RPA could be reduced and therefore no special precautions would be necessary. The use of special low impact piled foundations could reduce the impact on tree roots and reference is made to engineering/foundation drawings that have been prepared. These do not appear to be with the appeal documents.
17. Suitable foundations can often be secured by planning condition. However, the plans on which the AIA is based do not appear to show the proposed driveway relative to garden. The top of the watercourse bank is not clearly identified but appears to coincide roughly with a contour around about 12.3m. Plan Ref 2078 D07 "Rear garden areas driveway as proposed" does not in detail show the relationship with the watercourse and tree trunks. It seems to show driveway beyond the top of the bank and beyond the protective barrier, the blue zone for ground protection and the yellow zone as delineated on the Tree Protection Plan. This is different from the information in the 17 December 2022 letter from Lowans Ecology and Associates for example that the closest point of the driveway to the Itchen Navigation would be 5.4m.
18. I acknowledge it is difficult to be precise about the distances from the water course given fluctuating water levels but because of the lack of clarity I do not consider that delaying these matters to planning condition stage would be appropriate. I cannot confidently conclude that the proposal would not cause unacceptable disturbance to the RPAs of the protected trees from construction operations and activity and then future vehicular activity. This could cause stress to the trees which would be particularly troublesome given a number of

trees already exhibit fungal infection, decay with substantial cavities, and imbalanced and asymmetric crowns.

19. The British Standard does allow for adjustment of nominal RPAs in certain circumstances. It also allows for encroachment by new structures if these are low impact but the evidence I have seen does not show where any compensatory area could be located.
20. The original AIA indicates that T13 would need to be heavily pruned if it is to be retained in the short term. Elsewhere it is suggested that T13 could be removed to address over shadowing and subsequently it is asserted that no pruning would be required for construction to take place. In my judgement the evidence in relation to the riverside trees lacks clarity and is inconsistent. I cannot confidently conclude that the amenity value of the riverside trees would be retained or that there would be no harm to the character and appearance of the CA.
21. I acknowledge that the condition of the trees leaves a lot to be desired. Irrespective of the proposed development it seems likely that significant maintenance and management works would be necessary. However, it is possible that less severe works might suffice if the development were not to take place and there would be more scope for the proposed alternative succession tree planting.
22. The appellant considers the extent of pruning that might be required is irrelevant to the appeal because no pruning is required to construct the building. However, as the Planning Practice Guidance (the PPG) explains consent is not required for carrying out work on trees subject to a Tree Preservation Order so far as such work is necessary to implement a full planning permission. Accordingly, I judge it is necessary for a clear understanding of the implications in relation to the trees before any planning permission could be granted.
23. Due to the scale of the proposal the harm to the character and appearance of the CA as a whole would be less than substantial. The proposal would release a larger house onto the market and provide accessible flexible space carefully designed to accommodate an older person. It would add to the housing supply, make efficient use of land and would provide employment and economic benefits during the construction period. However, these public benefits are tempered by the small scale of the proposal. They do not outweigh the harm to the CA which, although less than substantial, would be real and enduring.
24. I conclude that the proposal would be harmful to the character and appearance of the locality and the CA. There would be conflict with those parts of Policy DM1 of the LP, the Trees and Development SPD 2021 and Chapter 12 of the Framework which seek well designed places and to protect the character and appearance of the locality and the CA.

Living conditions for future occupiers of the proposed dwelling

25. The rear garden areas for the retained host property and the proposed dwelling would meet the extent of external amenity space required under the Quality Places SPD. The riverside trees would be to the west of the proposed dwelling. As the site is roughly triangular in shape its main west elevation windows would be about the same distance from the trunks of the trees as those in the

main west elevation of No 49. However, due to respective sizes and growth habitats, tree canopies would be much closer to the proposed windows than to the existing ones.

26. A substantial part of the garden for the proposed dwelling would be close to or beneath the canopies of trees. Whilst some shade in gardens is to be welcomed the unshaded part of the rear garden outside of the proposed driveway would be relatively small. This is different for the current No 49 where much larger unshaded garden is available. The back garden for the proposed dwelling would be well below the 12m for north facing gardens envisaged in the Quality Spaces SPD to compensate for excessive shade from the house. In these ways the proposal would fall well short of providing the adequate sunny garden envisaged in the SPD.
27. I conclude that living conditions for future occupiers of the proposed dwelling would be less than satisfactory. Accordingly, there is conflict with those parts of Policy DM1 of the LP, the Quality Places SPD and those principles of the Framework that seek to ensure a good standard of amenity for occupiers of land and buildings.

Flood risk

28. The site is located partially within Flood Zones 1, 2 and 3, and residential use is classified as "more vulnerable". Modelling compared to topographic levels show the proposed dwelling would be outside the maximum modelled 1:100 year plus 35% climate change flood extent. A system of appropriate surface water drainage, flood proofing of the building, finished floor levels of at least 11.95m AOD, and warning/evacuation measures could be secured by condition.
29. With appropriate conditions I conclude that on site flood risk for the proposed dwelling could be managed. Accordingly, I find no conflict in relation to those requirements of Policies DM3, DM5 and DM6 and Chapter 14 of the Framework that seek to manage flood risk and adapt to climate change.

Protected habitats and biodiversity

30. The proposal is accompanied by an Ecological Impact Assessment which found no evidence of protected species on the site itself although there are known bat roosts nearby and potential for the site to host birds and water reliant species. Subject to appropriate safe-guarding conditions the evidence indicates there would be no direct site-specific harm to protected species.
31. In the absence of a baseline of ecological conditions on the site or net gain calculations to demonstrate biodiversity across the site after development I cannot confidently conclude that two bird boxes, one bat box and two bee bricks even with the retention of existing deadwood stumps, and dead and decaying wood, could be considered to result in an overall biodiversity net gain.
32. The River Itchen is a Special Area of Conservation and a Site of Special Scientific Interest. Its features are chalk river habitats, pastures and woodlands that are Priority Habitats at local regional and national levels (the Itchen sites).
33. Uncontrolled discharges of pollutants from surface water runoff or into ground water, particularly at times of surface water flooding, could pose a direct threat to the water quality and its biodiversity habitats. In the absence of a plan indicating the extent of the buffer zone in relation to the

watercourse/drive/dwelling, the scale and position of a sustainable urban drainage system, how it could be implemented, and measures for its retention and management I cannot confidently conclude this would be sufficient to protect the Itchen sites or that there is sufficient certainty to enable this to be dealt with by planning condition.

34. The Solent Complex and New Forest National Park are designated as Special Areas of Conservation, Special Protection Areas, and Ramsar Sites (the Solent sites and the New Forest sites)¹. The Solent sites are unique and complex marine and estuarine habitats that support flora, including specialist plant species, and varied fauna and is one of the most important sites for wildlife in the UK and is internationally important for migratory birds. The New Forest is an internationally important area for its wildlife and birds, in particular nightjar, warblers, woodlark, hen harrier, honey buzzard, and hobby.
35. Natural England advises that high levels of nitrogen and phosphorus input to the Solent is causing eutrophication and visitor useage disturbs habitats and species in the New Forest. An additional dwelling would be minimal on its own. However, in combination with other plans and projects, it would result in a net increase in population which would create additional levels of nitrogen and phosphorus and have an adverse impact on water quality of the Solent and Itchen sites and result in increased recreational pressure particularly in the New Forest.
36. The Council has schemes in place for nitrate and phosphate offset credits and requires a set financial contribution per dwelling to address recreational impacts in the New Forest. The appellant provided a Nutrient Neutrality Nutrient Budget Calculator and has expressed a willingness to enter into a Deed under s106 of the Town and Country Planning Act 1990 for mitigation to ensure nitrates and phosphates nutrient neutrality and to meet the Recreation Mitigation Strategy objectives. No such Deed has been provided.
37. In the alternative the appellant suggests a planning condition that the development shall not be occupied until a mitigation package had been submitted to and approved by the Council. It seems likely to me such a package would require an appropriate s106 Deed. The PPG does not rule out the use of a condition to require an applicant/appellant to enter into a planning obligation or agreement. However, the proposal is not a particularly complex development scheme and there is no clear evidence that the delivery of the development would otherwise be at serious risk so as to amount to exceptional circumstances to justify this course of action.
38. Nor does the wording of any of the conditions proposed by the Parties fully address all the matters relating to the direct effect of surface water runoff on the Itchen, nitrogen and phosphates input, and recreational pressures. Whether or not similar conditions have been found to be appropriate elsewhere the burden of proof is high. In my judgement the use of planning conditions would not provide the certainty necessary for me, as Competent Authority, to conclude there would be no severe effect on the integrity of the protected sites in this case.
39. For the reasons set out above I cannot conclude that there would be a net biodiversity gain on the site or that the proposal alone, and in combination with

¹ Together with other overlapping designations set out in the Biodiversity Action Plan

other plans and projects, would not have a severe adverse effect on the integrity of protected habitats. I therefore find conflict with those parts of DM1, DM3, DM6, DM8 and DM11 of the LP, the Biodiversity SPD and Chapter 15 of the Framework that seek to protect, conserve, and enhance protected habitats, and seek a net gain of biodiversity on all development sites.

Other Matters

40. Bishopstoke Manor House is a Grade II Listed Building in recognition of its late 18th/early 19th century historical and architectural merit. Due to the distance and intervening trees, there is limited intervisibility between the Manor House and the appeal site. The appeal proposal would have a neutral effect on the Listed Building and the setting in which it is appreciated.
41. The appellant has offered to remove the rear balcony but such plans are not before me and the appeal process should not be used to develop a proposal. There is overlooking from a balcony above the eaves at No 51. I have little information about its planning history but overlooking from elsewhere is not a reason for to allow overlooking from a new development.
42. I find a lack of clarity about parts of the proposal and some inconsistencies in the information. Accordingly, conditions should not be used to make the proposal acceptable. It is proper that the Council suggests conditions considered to be necessary in the event that the appeal were to be allowed. This does not prejudice the Council's case.
43. Caselaw has held that personal circumstances can be a material consideration. I acknowledge the personal circumstances of the appellant including living on the site for many years and the desire to downsize in later life. However, these matters in themselves would not amount to an exceptional circumstance as envisaged in the South Buckinghamshire judgement².

Planning Balance

44. The overarching sustainable objectives of the Framework are to be delivered through the preparation of plans and are not criteria against which every decision on proposals can or should be judged. The Council can demonstrate just in excess of the required five-year deliverable housing land supply so the so-called tilted balance at Paragraph 11 d) of the Framework is not engaged.
45. The proposal would release a larger house onto the market and provide accessible flexible space for an older person. It would add to the housing supply, make efficient use of land and would provide employment and economic benefits during the construction period. Whilst these are significant benefits they are tempered by the small scale of the proposal.
46. The appellant has had a significant input into the design and seems likely to be the future occupier. However, there is no mechanism to ensure this would be the case should circumstances change and I have little evidence about the lack of availability of land to meet the demands for self/custom build housing in the locality. Accordingly, this adds relatively little weight in favour of the proposal.

² *South Buckinghamshire DC v Porter* [2004] UKHL 33

47. Flood risk, the appearance and materials of the building, and low carbon emissions and energy efficient construction are to be expected of all developments. These are neutral factors in the balance.
48. The proposal would harm the living conditions of occupiers of the host property and provide less than satisfactory living conditions for future occupiers of the proposed dwelling. The spacious setting of the Itchen Navigation would be reduced and I cannot confidently conclude that protected trees would be unharmed. There would be less than substantial harm to the CA, but this would be harm nonetheless that would not be outweighed by the public benefits of the proposal. Notwithstanding the overall size of the appeal site, the reduction in spaciousness, the less than satisfactory living conditions for future occupiers of the host and proposed dwellings, and the effect on protected trees together indicate a cramped and contrived development that would not amount to good design. These matters carry substantial weight against the proposal.
49. I cannot confidently conclude that the proposal would not, alone or in combination with other plans and projects, contribute to severe adverse effects on the integrity of the protected sites, and the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development proposed in this case. Regulation 63 of The Conservation of Habitats and Species Regulations 2017 therefore prevents me, as the competent authority for this appeal, from granting permission.
50. Article 8(1) of the Human Rights Act 1998 includes that everyone has the right to respect for their private life and their home. I have also had due regard to the Public Sector Equality Duty (PSED) set out under s149 of the Equality Act 2010. Dismissing the appeal would not render the appellant homeless and it has not been demonstrated that existing home conditions adversely affect the appellant's physical and mental wellbeing. I have seen no evidence to indicate that accessible flexible space carefully designed to accommodate an older person would be unavailable in the locality.
51. In this case dismissing the appeal would not in my judgement interfere with the appellant's right to peaceful enjoyment of the existing home. The harms I have identified outweigh the desire of the appellant to construct the dwelling in the manner proposed. Moreover, any interference in relation to proposed development would accord with the law and be in pursuance of well-established and legitimate planning aims as described above. I conclude that it is proportionate and necessary to dismiss the appeal.

Conclusion

52. In failing to comply with Policies DM1, DM3, DM6, DM8 and DM11 of the LP the proposal cannot be said to comply with the development plan as a whole. I have found insufficient material considerations to outweigh the conflict with the development plan. The appeal should be dismissed.

S Harley

INSPECTOR