



Appeal Decision

Site visit made on 9 April 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2024

Appeal A Ref: APP/W1715/W/23/3329598

63 Underwood Road, Bishopstoke, SO50 6FX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Dr Gary Chaffey against the decision of Eastleigh Borough Council.
- The application Ref is F/22/94422.
- The development proposed is First floor extension to 63 Underwood Road and construction of a new two storey end-of-terrace dwelling.

Appeal B Ref: APP/W1715/W/23/3334365

63 Underwood Road, Bishopstoke, EASTLEIGH SO50 6FX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Dr Gary Chaffey against the decision of Eastleigh Borough Council.
- The application Ref is F/23/96175.
- The development proposed is first floor extension and proposed 5-bedroom, two storey, end-of-terrace dwelling with associated parking provision.

Decision

1. The appeals A and B are dismissed.

Applications for costs

2. Applications for costs, with respect to both Appeals A and B, have been made by Dr Gary Chaffey against Eastleigh Borough Council. This is the subject of a separate decision.

Preliminary Matters

3. The proposed developments, that relate to appeals A and B, are similar and relate to the same site. Both consist of an extension to the host dwelling and erection of an attached dwelling to its side. As a result, I shall deal with both within this linked appeal. The scheme associated with Appeal B (scheme B) was submitted in an attempt to resolve the Council's concerns in regard to the scheme the subject of appeal A (scheme A). This includes a reduction in the scale of extensions to the existing dwelling, relocating the proposed dwelling forward by around 1.8 metres, an increase in bedrooms of the proposed dwelling from four to five, revisions to the proposed boundaries, and amended elevations as a result of the revised floor plans. Where relevant I will discuss the effects of each scheme separately and elsewhere, together, where they have shared/similar effects.

4. The second scheme was refused with an additional reason for refusal relating to the impact on the Solent Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar sites due to nutrient loading. It seems that for Scheme A the Council was content that the Appellant intended to purchase nitrate and phosphate credits from the Council's Scheme. Whereas for Scheme B, the Council reported that it had received no confirmation that the Appellant would make use of the scheme or provide another form of mitigation. As such, I shall make this consideration a main issue for both appeals A and B.
5. Planning obligations have been provided to satisfy the Habitat Regulation Assessment and contribute to the Council's Nitrate and Phosphate Credit Schemes. For Scheme A, A S106 Legal Agreement, in the form of a Unilateral Undertaking¹ (UU), has been submitted in support of the proposal. Also, in association with Scheme B, a separate UU² has been submitted.
6. Both Undertakings would make a nitrate mitigation contribution of £10,230 and a phosphate mitigation contribution of £6,000. These would be paid to the Council prior to the occupation of the proposed dwelling. The Nitrate mitigation contribution would contribute to measures to neutralise nitrates from the water to mitigate the effects of increased nitrate levels in the Solent caused by development. The phosphate sum would be put towards the Council's Phosphate Scheme that aims to offset the effect of nutrient run-off for new developments in the Itchen SAC catchment area.

Main Issues

7. The main issues for appeals A and B are:
 - The effect of the proposed development on nature conservation, with particular regard to Stoke Park Woods Site of Importance for Nature Conservation (SINC) and ancient woodland,
 - The effect of the proposal on the living conditions of future occupiers, with regard to the quantity of garden provision, and
 - The effect of the development on the integrity of the Solent SAC, SPA and Ramsar sites, from nutrient loading.

Reasons

Impact on the SINC

8. The appeal site shares a rear boundary with the Stoke Park Woods SINC site which includes ancient woodland priority habitat. Stoke Park Woods is designated a SINC having a significant element of ancient semi-natural woodland and containing other communities that are of restricted distribution in the country. Beyond the rear boundary of the appeal site, the landform of the SINC consist of undulating land. The immediate area beyond the boundary consists of a small strip of level land, the land then slopes downhill as a woody bank to a pathway and then rises up a gradual hill. The embankment contains trees, but these and their groundcover are of lesser quality than flora found further into the woodland. Although of lesser quality, the edges of the SINC are the most vulnerable to further degradation due to its proximity to human activity and development outside the site.

¹ Unilateral Undertaking, by Gary Chaffey and Natasha Primmer, dated 23 January 2024

² Unilateral Undertaking, by Gary Chaffey and Natasha Primmer, dated 26 February 2024

9. Policy DM11 of the Eastleigh Local Plan [2022] (LP) relates to nature conservation and requires development proposals to protect, conserve and enhance all international, national and local nature conservation designations. In terms of national and local designations, such as the SINC, part 4 of the policy states that development will not be permitted if it is likely to have a direct or indirect adverse effect on a SINC unless it can be demonstrated that it meets five criteria. These consists of: (a) that there are no alternative solutions, (b) the adverse effects are unavoidable, (c) measures are taken to mitigate or compensate for the adverse effects, (d) there is overall biodiversity net gain, and (e) the benefits of development clearly outweigh the adverse effects.
10. In addition, part 6 of policy DM11, states that development will not be permitted if it would result in the loss or deterioration of an irreplaceable habitat such as ancient woodland, unless subject to exceptional reasons or a suitable compensation strategy. Part 7, of the policy, identifies that buffers free from development will be provided around designated sites to avoid/mitigate impacts, including recreational impact and to maintain dark skies.
11. In considering LP policy DM11 4(a), in regard to alternative options, it has not been demonstrated that there are no alternative options for new housing within the district. Nonetheless, in terms of on-site considerations the plot is to the side of the host dwelling and this dictates, to a large extent, the position of the proposed dwelling. On this basis, in local terms there are no clear alternative options for the general location of the proposed dwelling than is proposed for either schemes A or B.

SINC issues with respect to Scheme A

12. In considering whether the adverse impact would be unavoidable, as sought by part 4(b), the scheme of Appeal A would place the proposed dwelling around three metres of the rear boundary. This would extend built form towards the SINC boundary. Due to its proximity, this would cause shading which would erode the quality of habitat and reduce access to ambient daylight and afternoon/evening sunlight within the woodland. Moreover, associated human activity close to the boundary would be likely to harm habitat and cause disturbance to wildlife within the SINC. This would include disturbance caused through the use of the narrow rear garden and light spill from rear rooms, these are concerns shared by the Council's ecologist. I do not find that having curtains drawn at night, which could not be guaranteed in perpetuity, would address this harmful effect.
13. Furthermore, the Council's ecologist identified that a 20-metre buffer should be provided around the SINC from the canopy edge. Planning Policy Guidance (PPG) recommends that for ancient woodlands, a proposal should have a buffer zone of at least 15 metres to avoid root damage and would contribute towards ecological networks.
14. The Appellant's ecology report³, submitted in support of Scheme B, explains that the existing dwelling has negligible potential for bat roosting and no evidence of bats was found. Nevertheless, it found as the site was adjacent to the edge of the SINC, it would be likely to be of moderate to high bat foraging potential for local populations of bats. It found connectivity to the west was

³ Ecological Appraisal, by Aluco Ecology Ltd, December 2023

weak, presumably due to the extent of existing build form along the western boundary of the SINC, but had a small potential for a commuting line from the woodland along the southern boundary of the site across Underwood Road. The proposed development would substantially breach the recommended 15 metre buffer compromising the bat foraging route and resulting in a degradation of connectivity.

15. The existing house is within this buffer, but its corner is about 5 metres from the boundary at its closest point and it mostly presents a side elevation towards the woodland. Neighbouring development is also within this 20-metre buffer, being between 10-15 metres from the boundary. Although this has resulted in some deterioration of the desired 20 metre buffer, other existing development largely provides a reasonable albeit non-compliant separation distance. Being within the buffer and closer than the host dwelling, the proposed dwelling, would have a substantially greater effect on the trees and habitat of the SINC both in terms of light spill and shading. Light spill from rear facing windows would disturb wildlife, especially nocturnal creatures and those foraging at dusk, such as bats. Although, the site and its surroundings have been occupied by housing since around the 1960s, the intensity and proximity of the proposed dwelling and its garden would create a new material impact on the SINC.
16. Shading of parts of the woodland, from the proposed dwelling, would be likely to reduce the growth of woodland and shade habitat areas. The photograph within the Appellant's arboricultural statement demonstrates that whilst the crowns of several trees within the woodland exceed the heights of the existing dwellings, this also demonstrates that other areas of the crowns would fall in shade through the proposed dwelling. Shading would be likely to reduce the growth of indicator species and foraging material and erode the overall habitat quality of this part of the SINC.
17. An Ash tree and hazel stool, close to the appeal site and within the SINC, are reported as having been recently removed by Forestry England. This would improve light gaining access into the woodland to some extent, but the mass and proximity of the proposed dwelling would substantially outweigh any light gained by such removal. Also, whilst the embankment places parts of the woodland in shade, this only affects a small part of the SINC and a part which would have always been in this state.
18. Although the proposed rear garden would remain a garden, the existing plot would be subdivided to serve two family sized dwellings, creating an intensification of the space. Furthermore, by providing only a short garden area for scheme A, greater recreational activity would be focussed on the rear garden's small area closest to the rear boundary and the SINC. The embankment within the SINC creates some separation from the boundary and the main woodland. However, the quality of individual tree groupings and the topography within the SINC do not provide compelling reasons to set aside the advice of the PPG to maintain a buffer around the perimeter of ancient woodlands. An absence of objection from Natural England, which does not consider the impact of development on local designated nature interests, would not demonstrate an absence of harm to the SINC.
19. Mitigation measures, in consideration of part 4(c) of policy DM11, would consist of protective measures for boundary trees within the woodland as proposed in

the Appellant's arboricultural report. Further protective measures could be agreed through the imposition of a condition requiring compliance with a Construction Environmental Management Plan, new landscaping, no gated access and removal of permitted development rights. However, new landscaping would further compromise the rear garden space and these measures would be insufficient to off-set the effect of development in such close proximity to the rear boundary. Further mitigation is offered in the Appellant's ecological report to reduce the shading effects of the proposal by undertaking targeted coppicing works. However, such work would require the agreement of third parties which cannot be guaranteed. I am therefore unconvinced that the proposed protection measures would suitably mitigate the adverse effects caused to the SINC.

SINC issues affecting Scheme B

20. In terms of DM11 policy 4(b), Scheme B would be around 5 metres from the boundary. The effect of development, due to its proximity to the boundary would be lessened, but not materially so. The second scheme would still result in development that significantly intrudes into the Council's required buffer. Furthermore, the revised footprint would make no material difference to the effect of blocking access for foraging bats to the woodland from the west by largely occupying the gap between No's 63 and 65.
21. Scheme B is further from the rear boundary and has a larger garden area. This removes some of the adverse harm found with the first scheme. Nonetheless, this scheme would still erode the bat foraging corridor. It would also result in substantial shading and light spill towards the SINC, resulting in significant adverse effects. The offered mitigation, as found above for Scheme A, would also not off-set the effect of the proposed development of Scheme B.

SINC matters affecting both schemes A and B

22. Although the site is currently occupied by a mobile home and shed, and various other outbuildings can be seen in neighbour's rear gardens, the disturbance caused by these existing buildings would be substantially less than would be likely to occur from the proposal. These single storey garden structures have few windows, those that exist are partially or fully looking away from the SINC. As such, the light spill and shading from these structures would be limited and would be further reduced due to the existence of rear fences.
23. The submission indicates that the proposal would deliver an overall biodiversity net gain in satisfaction of part 4(d) and this weighs in favour of the proposals associated with both schemes A and B.
24. The existing dwelling of No 63 is already close to the rear boundary. However, this is set at an angle which reduces any direct conflict of light spill. The existing dwelling has rooflights to its kitchen and lounge areas. Nevertheless, these spaces are set further from the boundary and the effect of the light spill from the existing dwelling would be substantially less than the effect of the proposal.
25. As a consequence, the scale and proximity of the proposed dwelling to the SINC, of both schemes A and B, would result in significant indirect adverse effects that would not protect or conserve the SINC. Both proposals would

therefore conflict with LP policy DM11 whose purposes I have already outlined above.

Living conditions

26. The existing dwelling is within a relatively large plot in comparison to its neighbours. The proposed dwelling of schemes A and B would occupy the side garden of the host dwelling. It would include a rear, side and front garden. It would be attached to the host dwelling at a 45-degree angle to align with the nearest side and rear boundaries.
27. LP policy DM1 provides general guidance for new development. This includes requiring that development does not have an unacceptable impact on the residential amenities of new residents and is well integrated with adjoining uses in relation to adjoining buildings, spaces and views. The Council's 'Quality Places' SPD [2011] provides further guidance on the provision of private amenity space. This explains that gardens should be sunny, well connected to internal spaces and provide a certain measure of privacy. It also states that where excessive shading renders significant areas of the garden unusable the size of garden will need to be increased. The guidance requires that at least 60% of the floorspace of the dwelling be provided as private amenity space. It is undisputed between parties that this numerical provision would be achieved for both schemes A and B.
28. Gardens within the area are of various shapes and sizes, many being long spaces of generous proportions. The Appellant's evidence demonstrates, through an aerial view of the local area, that some local gardens are similar in size to the proposed garden or smaller. This therefore demonstrates that the proposed gardens' size, for schemes A and B, would be in keeping with the general pattern of development. However, the small gardens in the area are generally on corner plots where users would have access to open views and reasonable levels of daylight, unobstructed by surrounding buildings. As a result, the examples do not illustrate a local context where private garden areas would be similarly constrained as proposed by either schemes A or B.
29. The Council's officer report explains that the garden area associated with appeal A is around 99sqm. The most coherent and consolidated part of this being within the front garden but affording limited privacy for users. The rear and side garden would be a narrow section of land that would wrap around the rear and side of the dwelling. As such, the rear garden would be in between the woodland of the SINC and the two-storey rear elevations of the dwelling creating a narrow 'canyon' with limited access to natural light. As such, despite this being relatively wide, users of the rear garden would suffer a sense of being enclosed. The side garden is also compromised and whilst gaining access to reasonable daylight levels, would be of insufficient size to address my concerns. Also, the front garden would not be a private space. It would be overlooked by occupiers of No 63 and the public realm. Any new landscaping would be insufficient to secure suitable privacy.
30. Accordingly, the proposal associated with Scheme A would have an enclosed garden area that would be dominated by trees and built form, resulting in poor living conditions for future occupiers. Consequently, the proposal would conflict with LP policy DM1 and the Council's guidance found in Quality Spaces SPD. These seek, inter alia, for development to have an acceptable impact on the

amenities of new residents and provide sunny and useable outside private space.

31. The proposed dwelling for Scheme B was relocated and moved 1.8 metres forward. This has resulted in a slightly greater gap being provided to its rear. Furthermore, a larger garden area has been created to the rear by relocating the plot boundaries. The gap between the rear elevation of the proposed dwelling and the rear fence has been increased to an extent that the identified sense of over-domination has been largely mitigated. This alteration, plus the overall increase in the unit's garden size, would create a good quality and useable garden area of adequate size and configuration.
32. As a result, the proposed private rear and side garden would enable the dwelling to function well and provide a high standard of amenity and living conditions for future occupiers. As a result, the proposed dwelling of Scheme B would comply with LP policy DM1 and the Council's guidance found in Quality Spaces SPD.

Solent SAC, SPA and Ramsar sites

33. The site is located within the zone of influence of the Solent SAC and Itchen SAC, which are European Designated Sites afforded protection under the Habitat and Species Regulations [2017] (the habitat regulations). This requires the competent Authority to be satisfied that a proposal would not lead to likely significant effects upon the protected sites. Increase wastewater from new housing development in the area is advised, by Natural England, to have an adverse effect on the water quality of the Itchen SAC and Solent SAC catchment areas. Consequently, new development is required to achieve nutrient neutrality to comply with the requirements of the Habitat Regulations. In those circumstances, having regard to the Habitats Regulations, planning permission should not be granted unless an Appropriate Assessment (AA) has been undertaken to assess the likely effects.
34. The Council operates a credit system whereby it removes land from agricultural use and creates recreational spaces to offset the nutrient output from new development. Natural England raised an objection to the Council's credit scheme with respect to the effect of the proposal on phosphates and the proposed phosphate mitigation. The Appellant has offered a contribution to the Council's credit scheme through the submitted UUs for both Schemes, which would appear to satisfy the Council's requirements.
35. Nonetheless, potential mitigation, such as offered through the UUs, cannot be taken into account when determining whether an AA is required. It may be considered if an AA has been undertaken and determined that the development would harm the integrity of the SAC. The Appellant has made an obligation to pay financial contributions in accordance with the mitigation measures required by the Council. However, as I am dismissing the appeal for other reasons it is not necessary for me to consider this matter further as it could not change the outcome of this appeal.

Other Matters

36. Some interested parties have made representations in support of both schemes A and B. These identify the benefits of the schemes in providing greater space for the Appellant's family and in contributing towards affordable housing.

However, there is no mechanism to secure the dwelling as 'affordable' and the benefits to the owner are private interests of only limited weight in favour of the scheme. It is also considered that the proposal would provide adequate parking and be a visual improvement to the site, meeting the Council's policies for these matters. However, an absence of harm in these respects can only be considered as neutral factors in the planning balance.

37. The proposed development subject to appeal A followed the Council's refusal of a detached dwelling that was set a significant distance from the rear boundary. Both schemes A and B were submitted with versions of new development that connected to the existing dwelling to satisfy good design aspirations following discussion with Council officers following the first refusal. This demonstrates that the agreed design solution, that would complement the character and appearance of the area, is an important consideration in favour of the proposal.

Planning balance and conclusion

38. The National Planning Policy Framework (the Framework) seeks to boost the supply of housing. The Council has a 5 year supply of housing, at 5.1 years, but this is not a cap to future suitable housing sites to come forward. Both proposed schemes would deliver a family sized dwelling and would make a contribution, albeit small, towards meeting the housing requirement of the area. The proposed dwelling would make efficient use of the land and maximise opportunities to increase density. The development of both appeals would also garner support from the Framework in recognising the important contribution made by small to medium sized sites to housing provision, which can often be brought forward relatively quickly.
39. The schemes, being within a built-up area, would provide development in a sustainable location and contribute to the local economy during construction and would increase local spending by future occupiers. The schemes would also deliver social and environmental benefits, including providing a biodiversity net gain through enhanced planting and ecological enhancements.
40. In contrast, I have found that both schemes would result in significant adverse effects on the SINC, where mitigation measures would be ineffective to outweigh the identified harm. Furthermore, I have also found that Scheme A would harm living conditions of future occupiers, both matters resulting in conflict with the development plan.
41. Although the proposal of Schemes A and B, would provide some benefits and gain support from the Framework, this does not outweighed the conflict I have found with the relevant policies of the development plan when taken as a whole.
42. For the above reasons, appeals A and B are dismissed.

Ben Plenty

INSPECTOR