



## Appeal Decision

Site Visit made on 19 October 2021

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

an Inspector appointed by the Secretary of State

**Decision date: 26<sup>th</sup> October 2021**

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**Appeal Ref: APP/C1760/W/21/3274523**

**Erlcombe, Butts Green, Lockerley, SO51 0JG**

- 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 Blackledge against the decision of Test Valley Borough Council.
  - The application Ref 20/01723/FULLS, dated 23 July 2020, was refused by notice dated 29 January 2021.
  - The development proposed is erection of two, three bedroom detached dwellings with detached garages and associated hard and soft landscaping, and installation of package treatment plant.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The above description of development includes the installation of a package treatment plant which was not mentioned in the description on the planning application form. However, the Council considered the appeal in this way and I shall do the same.
3. In July 2021 an amended National Planning Policy Framework (the Framework) was published. This was referred to in the Council's Statement and the appellant had the opportunity to address it in Final Comments.

### Background and Main Issue

4. The development, in combination with other developments, has the potential to affect European sites<sup>1</sup> and the second reason for refusal of the planning application relates to such matters. Mitigation measures, in the form of a Habitat Mitigation Contribution Agreement and a Unilateral Undertaking under s106 of the Town and Country Planning Act 1990 to install use and manage a package treatment plant to serve the proposed development and the existing dwelling, are now proposed. On this basis the Council no longer wishes to defend the second reason for refusal.
5. Taking the above into account the main issue for the purpose of this appeal is whether adequate living conditions would be provided for future occupiers of the proposed development.

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<sup>1</sup>New Forest Special Protection Area, Solent and Southampton Water Special Protection Area, Solent and Southampton Water Ramsar, Solent Maritime Special Area of Conservation, Solent and Dorset Coast Special Area of Conservation

## Reasons

6. Policy COM2 of the Test Valley Borough Revised Local Plan Development Plan Document 2016 (the LP) provides in principle for development within the boundaries of settlements identified on the appropriate inset plan. The appeal site is in the Lockerley designated settlement boundary. Lockerley is defined as a rural village where, amongst other things, windfall development would be acceptable in principle provided other planning policies and material considerations are satisfied.
7. The host property, Erlcombe, is a detached house in a long, spacious plot. Its western side boundary adjoins, amongst others, the rear boundaries of the houses Tyndale, Bowmans and Crispins. The proposed dwellings would be positioned in a line in the garden behind the host house with the front elevations facing the shared boundary with Tyndale, Bowmans and Crispins. The dwelling proposed at Plot 2 would be parallel with that boundary at a distance of about 6m; the dwelling at Plot 1 would be at an angle to the boundary at a distance of about 6.5m at the closest point.
8. Due to the relatively short gardens of Tyndale, Bowmans and Crispins, (the kitchen wall of Crispins is some 5.6m from the shared boundary), even with a fence, the front windows of the proposed dwellings would be overlooked by the many windows in the rear elevations of Tyndale, Bowmans and Crispins. This would result in a poor level of privacy for occupiers of the proposed dwellings.
9. To address this the appellant has proposed that louvres be fitted to all the ground floor windows facing the western boundary. However, this would reduce sunlight and daylight resulting in gloomy and oppressive living conditions inside the proposed dwellings. This would be the case given the length of the open plan kitchen/dining/living areas. The louvres would be in the control of future occupiers of the proposed dwellings and, if removed or angled to improve daylight, would be likely to result in overlooking into first floor windows of the adjacent properties because of the relative positions of the existing and proposed properties. Moreover, even if it were reasonable to require louvres by condition, enforcing the way in which they were used would be difficult and intrusive. In addition, there would only be high level roof lights for first floor bedrooms facing the western boundary to ensure there would be no mutual overlooking between the existing and proposed dwellings. Relying on such contrived mechanisms for two new dwellings would not amount to good design.
10. The additional window in the flank elevations to the living room areas would be close to a hedge and close boarded fence respectively. Accordingly they would not so substantially improve light into, or outlook from, the proposed living accommodation as to overcome the harm identified above.
11. To the east the appeal site shares a boundary with the grounds of a local school and The School House. Given the distance between them, and the angle of the proposed dwelling on Plot 1, there would be no overlooking or over shadowing of windows in The School House or the school. There are substantial trees in the school grounds and additional tree and hedge planting is proposed as part of the development to help preserve privacy in the school grounds and the garden of The School House. However, these would cause over-shadowing of the rear garden areas of the proposed dwellings. This has not been taken account of in the submitted shadow diagrams because the Tree Officer did not specifically mention it. Nevertheless, this remains a material consideration. I

acknowledge that the Decision Notice does not specifically mention the gardens. However, in my experience "dwellings" is often used to refer to a house and its garden and it is clear from the Officer Report that the Council considered the proposed gardens to be part of the development and to be inadequate because of the extent of over-shadowing.

12. For the reasons set out above I conclude the proposed development would not provide adequate living conditions for future occupiers of the proposed dwellings and their gardens in terms of privacy, daylight and sunlight. It would not amount to good design in these respects. Accordingly the proposed development would conflict with Policy LHW4 of the LP and those principles of the Framework that seek a good standard of amenity for all. In conflicting with Policy LHW4 the proposal also technically conflicts with COM2 in that the latter requires development to be appropriate in terms of the other policies of the LP.

### **Other Matters**

13. The proposal, in combination with other development, has the potential to effect European sites due to an increase in recreational disturbance and an increase in nitrates entering the Solent catchment area. Following an Appropriate Assessment the Council and Natural England are satisfied that the proposed measures would appropriately mitigate all identified adverse effects that could potentially occur. I have no compelling reason to conclude differently even though I have not seen the completed Habitat Mitigation Contribution Agreement or proof of title. In view of my conclusion in relation to the main issue it is not necessary or appropriate for me to put the appellant to further trouble or expense in supplying these documents in relation to this appeal.
14. Neighbours are concerned about potential noise from the proposed package treatment plant. Had my conclusion on the main issue been otherwise I would have sought further information on this but, in the circumstances, it is not necessary or appropriate for me to do so.
15. The appeal proposal was developed to address concerns raised in relation to an earlier proposal which was withdrawn. The appellant has expressed surprise with the way in which the Council handled the application given the views of the Case Officer prior to the issue of the decision on the planning application. However, these matters do not affect the material considerations in respect of the appeal proposal and I have reached my own conclusions based on the evidence before me.
16. The Council has indicated a 6.27 year supply of deliverable housing land and over the last three years the Housing Delivery Test indicates a score of 173%. There is no dispute between the Parties on this matter and I see no reason to doubt the available evidence.

### **Planning Balance and Conclusion**

17. Whilst I acknowledge comments made by third parties, I note that the Council considers the proposed dwellings would be of an acceptable architectural design and has no objections in respect of parking, access, garden size, outlook from neighbouring properties, noise, effect on trees or on-site biodiversity. I find no compelling reason to conclude differently and the proposal would satisfy Policies of the LP in these respects. However, all developments should be

acceptable in these ways so they do not add much weight in favour of the proposal.

18. Two additional dwellings would be provided within the settlement boundary and outside any high risk flood zone. There would be additional spend in the local economy and temporary economic benefits from employment during the construction period. These benefits are tempered by the small scale of the development and do not outweigh the harm I have found by the failure to provide adequate living accommodation, the poor design in this respect, and the associated conflict with Policies of the LP.
19. In failing to comply with Policies LHW4 and COM2 the proposal cannot be said to comply with the development plan taken as a whole. I have found insufficient material considerations to indicate a decision other than in accordance with the development plan. The appeal should be dismissed.

*S Harley*

INSPECTOR