



## Appeal Decision

Hearing held on 4 October 2023

Site visit made on 4 October 2023

**by Rory MacLeod BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 October 2023**

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**Appeal Ref: APP/C1760/W/23/3322542**

**21B Wolverdene Road, Andover, Hampshire SP10 2AY**

- 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 Andrew Emery against the decision of Test Valley Borough Council.
  - The application Ref 22/03215/FULLN, dated 7 December 2022, was refused by notice dated 28 February 2023.
  - The development proposed is demolition of an outbuilding and erection of two new residential dwellings with associated parking.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - (a) The effect of the development on the living conditions of occupiers of nearby dwellings in relation to overlooking and overbearing impacts,
  - (b) The effect of the proposal on the landscape character of the area, particularly through the loss of trees,
  - (c) The aspiration to achieve nutrient neutrality in relation to nature conservation interests, and
  - (d) The adequacy of information submitted on the potential effect of the development on protected species.

### Reasons

#### *Living conditions*

3. The appeal proposal involves the demolition of a large outbuilding within the back garden to 21B Wolverdene Road (21B) and the construction of two houses with a shared vehicular access between them formed from Micheldever Road. The houses would be similarly designed over four levels with basement parking, two floors of living accommodation above and rooms in the roof.
4. The house on plot 1 would have rear windows and roof lights facing the rear elevation to the host dwelling. There would be a separation of some 18m to the nearest windows on plot 1, a family room with bathroom above, and about 20m to a lounge with a bedroom above with a roof light above this. The Council does not have adopted standards for minimum separation distances but 20m

- would be on the margins of acceptability for a back-to-back relationship to preclude a material loss of privacy through overlooking.
5. At the site inspection, I noticed a similar separation between a first floor rear bedroom window at 24 Micheldever Road and clear glazed front windows at no.21B. Clearly there is a degree of overlooking of the host dwelling here, but no.24 is on slightly lower ground and there is only one window that overlooks. The house at plot 1 would be on higher ground and there would be an array of clear glazed windows including roof lights facing no.21B. Whilst the appellant, as current occupier of no.21B does not object to this relationship, it would be unfortunate to design and site the new house on plot 1 to result in such an overlooking relationship for all future occupiers. In my judgement, there would be a material loss of privacy, and given the massing and proximity of the house on plot 1 to no.21B there would also be a marginal overbearing impact.
  6. The detached house at 33A Wolversdene Road (no.33A) has a wide but relatively shallow back garden. The garden is level and open with a hedgerow along the rear boundary with the appeal site. The hedgerow varies in height between some 3m and 4m and in its width. Its lowest and narrowest part is adjacent to where the house on plot 2 is proposed. As the house would be erected only about 1.3m from the boundary hedge it is not certain that this part of the boundary hedge would survive building operations. There would also be a desire from future occupiers to maintain a clear passageway to the side of the house.
  7. There would be a separation of about 14m between the rear facing windows at no.33A and the flank wall to the house on plot 2. Whilst there would be no windows in the flank wall, the high gable end would add to its apparent massing. The boundary hedge would do little to soften its appearance. The appellant asserts that there is not a right to a view, but the house on plot 2 would result in an overbearing impact on the adjacent rear garden and would dominate views from the rear patio, kitchen and living area.
  8. The house on plot 1 would also be visible from the back of no.33A. Bedroom windows on its upper floors would have an oblique line of sight to the rear wall of no.33A. There would be a separation distance of some 23m and the house on plot 1 would be farther from the boundary hedge than the house on plot 2. The hedge is more dense and higher at this point and would filter some views of the garden and rear windows at no.33A. There would not be a material overlooking or overbearing impact on living conditions at no.33A in relation to the house on plot 1.
  9. To the east of no.33A is a detached house at 3 High Beech Gardens (no.3), which also has a wide but relatively shallow and open back garden. According to the Council's calculation there would be a minimum separation of 17.5m between the dwellings. There would be an oblique line of site from upper floor bedroom windows at the house on plot 2 towards the back garden and rear windows at no.3. As the new house would only be about 2m from the rear boundary fence to no.3 it would appear uncomfortably close. The boundary fence and shed in the corner of the garden would not screen views from upper floor windows at the new house. There would be a detrimental effect on living conditions for occupiers of no.3 in relation to overlooking and loss of privacy. However, as the new house would not be in the direct line of sight from rear windows at no.3 there would not be a material overbearing effect.

10. The appellant contends that any resulting overlooking arrangements would be comparable to that existing between the back of 5 Cummins Close and his own dwelling at 21B. However, the house at 5 Cummins Close is set back from the shared boundary and there are intervening structures that filter views of the garden.
11. The Council has concluded that there would not be a material adverse effect on living conditions at either 5 Cummins Close or at 4 High Beech Gardens. I have no reason to disagree with their findings. But in relation to the effect of the proposal on living conditions at nos. 21B, 33A and 3 I have identified significant harm. The proposal would thereby be contrary to Policy LHW4 of the Test Valley Revised Local Plan (2016) (RLP) which requires development to provide for the privacy and amenity of its occupants and those of neighbouring properties. Whilst the proposal would be within defined settlement boundaries identified in Policy COM2 favoured for new housing, there would also be conflict with this policy because of the conflict with Policy LHW4.

*Landscape character and trees*

12. Micheldever Road is adjacent to the northern boundary to the appeal site but on a lower level. There is an embankment between the carriageway and the appeal site boundary, which is highway land, and along which are many mature trees. There are also mature trees on the northern side of Micheldever Road, the canopies to which frequently meet those on the embankment, resulting in an enclosed verdant corridor for a considerable length of the road.
13. The proposal involves creating a vehicular access from Micheldever Road through the embankment to a turning area serving basement and open parking spaces. This would require the removal of 6 trees on the embankment. The appellant's arboriculture consultant has surveyed the embankment concluding that all 6 trees are category B trees of moderate quality.
14. The Council has served and confirmed a Tree Preservation Order (TPO) on a row of 10 trees along the embankment, including the 6 to be felled. The trees are mainly sycamore but include 2 yew trees. The TPO identifies the trees as a group G1 rather than as individual specimens; this relates to their public amenity value as a group in a mid-position along the long lines of similar trees on the embankment. The 10 have been identified in relation to the threat to their retention from the appeal proposal.
15. The appellant's tree survey shows embankment trees to be retained both sides of the access. The survey indicates that the trunks to these trees would be close to the facing walls to the houses on plots 1 and 2, between 3m and 7m. As the siting of both proposed houses would be within the root protection areas for these trees, it is likely that tree roots would be severed by construction of foundations for the houses. Notwithstanding the tree protection measures within the appeal site itself near to the trees, recommended in the arboriculture survey, in my judgement it is probable that some or all of these trees, shown for retention, may suffer damage, may become unstable and may not survive the building operations.
16. The appellant is willing to provide replacement trees within the appeal site and within the embankment alongside. The strip of land between the new houses and the site boundary is shown to be only about 1.6m. It would not be practical to plant replacement trees in such a narrow strip so close to the houses.

17. There would be more scope for replacement trees on the embankment alongside the houses, but this is highway land not in control of the appellant. There is no information before me to confirm that the highway authority would support the provision of replacement trees on the embankment either side of the access or indeed what maintenance arrangements would pertain on completion of the development and who would be responsible for this. Under these circumstances it would not be appropriate to include a planning condition on landscape measures for the embankment as the appellant may not be able to discharge the requirements of the condition.
18. The proposal would result in a considerable excavation of the embankment to create the access and parking at the level of Micheldever Road. This would result in a stark contrast to the prevalent character of this part of the road. The two houses would also be an incongruous and conspicuous feature in the street scene. The mass of the dwellings spread over four levels from basement parking to rooms in the roof would be readily apparent in views through the access and would compare unfavourably with the character and appearance of dwellings in the surrounding area. Whereas no.21B and other dwellings near to Micheldever Road are largely screened by trees on the embankment, the two proposed houses would be unduly prominent, particularly if trees indicated for retention do not survive the building works. Furthermore, the elevations facing Micheldever Road would have a weak design, largely devoid of windows or other features generally associated with street facing elevations.
19. The proposal would result in the loss of trees that have public amenity value and would be detrimental to the landscape character of Micheldever Road. It would thereby conflict with policies E2 and COM2 of the RLP requiring new development to protect, conserve and enhance the landscape character of the Borough and that the health and future retention of important landscape features is not prejudiced.
20. The appellant has referred to other development along Micheldever Road to justify the proposal. At the western end of Micheldever Road, beyond the tree lined corridor and some distance from the appeal site, the road has a different character. It is open and spacious at the junction with Shepherds Row within which buildings of flats can be seen. Opposite this is a long-landscaped drive to a hotel. The hotel itself is largely screened by trees. The different character at this end of the road does not form a justification for the appeal proposal.
21. At the eastern end of the tree lined corridor are vehicular accesses and a road junction to housing. To the east of no.21B, there is a ramped access to three houses, 20-24 Micheldever Road, whilst on the opposite side of the road, there is a longer access to a single dwelling. All these dwellings are set back from the road and there is landscaping either to screen the buildings or to soften their appearance. These dwellings form a continuation of older traditional housing at the eastern end of Micheldever Road and a transition to the more verdant character of the tree lined corridor. By contrast the appeal proposal would be an unfortunate and conspicuous punctuation within that verdant corridor.
22. The appellant has referred to tree clearance within a more distant footpath section of Micheldever Road. The Council has explained that these works related to the prevalence of 'ash die-back' and that there is an agreed programme of tree replacements. This woodland management measure is not a justification for the appeal proposal.

### *Nutrient neutrality*

23. Test Valley supports several sites of ecological and conservation importance threatened by increases in nitrogen in part due to the increase in wastewater from new housing. Natural England recommends addressing this by “*nutrient neutrality*” in which individual schemes do not add to nutrient burdens. The main parties concur that the proposal, in the absence of any mitigation, would generate a total additional nitrate output of 6.31kg/year.
24. The appellant has proposed mitigation in the form of purchasing credits from a local farm selling nitrogen mitigation credits, but no information has been submitted to confirm this. The appellant would be required to enter into a legal agreement to secure the credits in relation to the appeal proposal, but no such agreement is before me. As such, the proposal fails to demonstrate nutrient neutrality and would be likely to result in an adverse effect on the integrity of water quality at the Solent designated sites from nitrate impacts. It would be contrary to Policies E5 and E8 of the RLP in relation to the protection of designated sites from pollution and to the requirements of the Conservation of Habitats and Species Regulations (2017) (as amended).

### *Protected species*

25. The proposal is accompanied by a Preliminary Ecology Appraisal (PEA) finding that it would be likely to only have a minimal impact on biodiversity due to the loss of low-value modified grassland. However, it noted that there is habitat within the garden and surrounding trees that could support bats, reptiles, slow worms and a range of invertebrate species. A Preliminary Roost Assessment (PRA) has been submitted; this surveyed just the outbuilding to be demolished concluding a negligible roosting suitability for bats.
26. Notwithstanding the low expectations of adverse impacts on protected and important species within the PEA and PRA, insufficient information has been submitted to verify this. The other outbuildings to be demolished or moved have not been surveyed, nor has an assessment been made on the impact of tree removal for foraging bats. The site has not been surveyed for the presence of slow worms, reptiles and dormice (which are present at Ladies Walk to the west of Micheldever Road). It would therefore be unsafe to grant permission on the present knowledge base or to rely on planning conditions for mitigation of all possible impacts. The proposal would not thereby conserve or enhance biodiversity in accordance with the requirements of Policy E5 of the RLP.

### *Planning balance*

27. The proposal would result in the benefit of two additional dwellings contributing to the overall need for more homes. The houses would be constructed within the built-up area of Andover identified for additional dwellings within Policy COM1 of the RLP. There would be economic benefits during the construction phase through employment opportunities and to a limited degree thereafter through additional local expenditure. However, the proposal would result in environmental harm to neighbours’ living conditions and through the loss of protected trees and potential damage to biodiversity and protected sites in the Solent through additional nitrate loading. The Council can demonstrate a five-year housing land supply and is not dependent on this site to help meet housing targets. The benefit of two additional dwellings is clearly outweighed by substantial harm which would conflict with the Development Plan.

## **Conclusion**

28. The proposal would have an adverse effect on the living conditions of occupiers of nearby dwellings in relation to overlooking and overbearing impacts. The removal of protected trees without adequate scope for replacement planting or for safeguarding other trees shown for retention would have a substantial adverse effect on the landscape character of the area. There are no measures in place to secure nutrient neutrality in relation to nature conservation interests, and the information submitted on the potential effects on protected species is inadequate. In all these respects, the proposal would be contrary to the adopted development plan. It would not be possible to satisfactorily address these matters using planning conditions.

29. For the reasons given above I conclude that the appeal should be dismissed.

*Rory MacLeod*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Andrew Emery	Appellant – 21B Wolversdene Road
Greg Cezair	Agent – Inception Development Consultancy Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Samantha Owen	Test Valley Borough Council
Claudia Hurlock	Test Valley Borough Council

### INTERESTED PARTIES:

Jane Wallage	33a Wolversdene Road
Graham Cross	3 High Beech Gardens
Denis Otto	22 Pipistrelle Crescent
Zilliah Brooks	Councillor, Test Valley Borough Council