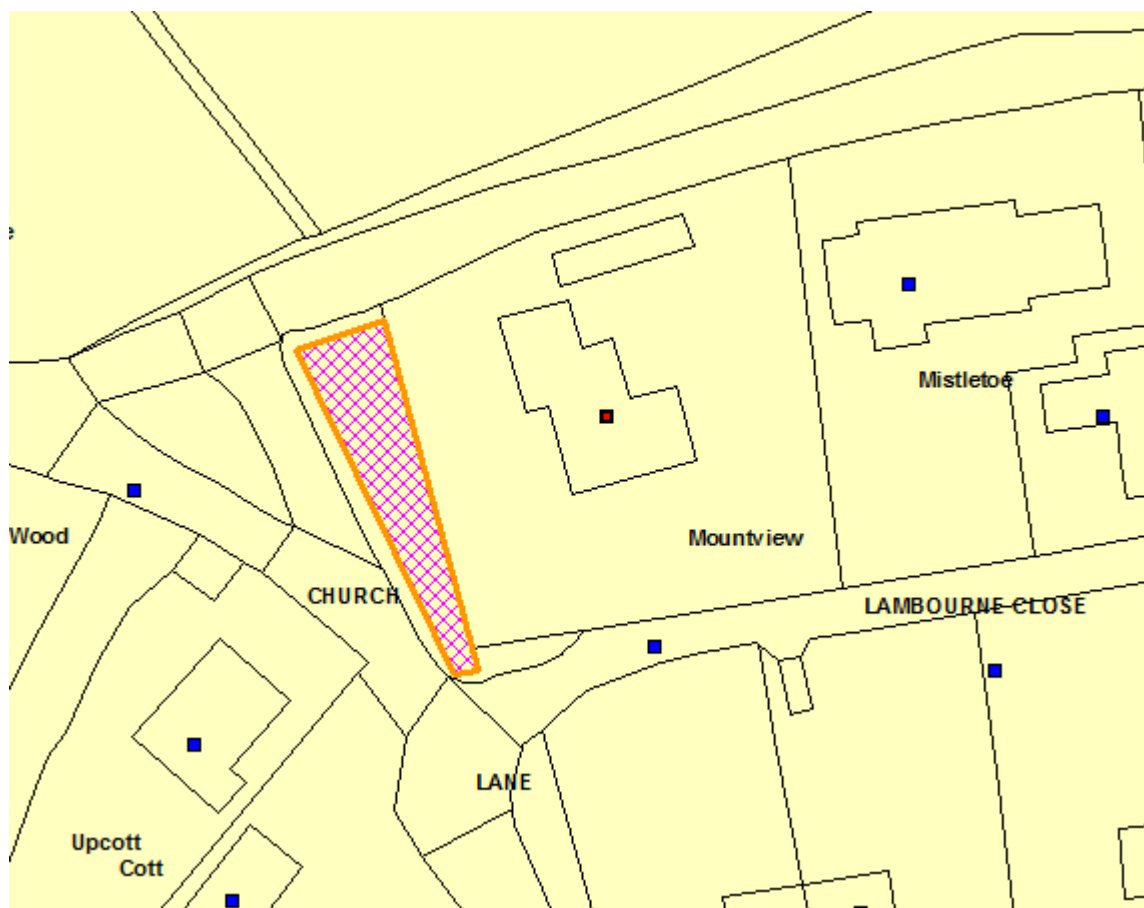


WINCHESTER CITY COUNCIL
PLANNING COMMITTEE

Case No: 20/00771/FUL
Proposal Description: (Revised Highway Report received 09.06.2020)Change of use of existing highway verge to ancillary amenity land for Mountview, Church Lane, Sparsholt.
Address: Mountview Church Lane Sparsholt SO21 2NJ
Parish, or Ward if within Winchester City: Sparsholt
Applicants Name: Mr and Mrs M Conroy
Case Officer: Verity Murphy
Date Valid: 16 April 2020
Recommendation: Permit

Link to Planning Documents : [Planning documents](#)

Pre Application Advice: No



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General Comments

The application is reported to Committee at the request of Sparsholt Parish Council, see Appendix 1.

A revised transport assessment was submitted and re-consulted upon on 09th June 2020. The revised transport assessment includes greater detail on the proposed use of the land and visibility to and from the site.

Site Description

The application site is located on the corner of Church Lane and Home Lane. There is a two storey detached dwelling on the site, with access points on the southern and western boundaries.

The site rises gently from Church Lane to the main dwelling. There is a hedge to the front of the property which forms the western boundary of the site with the highway. In front of this hedge is a piece of land/highway verge which has an area of approximately 151 sq.m and is designated as public highway by the highway authority, Hampshire County Council.

Proposal

The application proposes the change of use of existing highway verge to ancillary amenity land for Mount view, Church Lane, Sparsholt. There are no physical alterations to this piece of land proposed under this application.

Relevant Planning History

18/02656/HOU (Permitted 14.01.2019) Proposed insertion of a dormer window to a bathroom to the rear/side elevation of the dwelling

Consultations

Hampshire County Council: Highways Engineers

No objection to application.

The updated transport statement has been reviewed and demonstrates that there are no highways safety issues arising from the development. Whilst the proposal will change the use of the land to residential in planning terms, what is actually happening on the land will not change nor affect visibility to and from the site. There is no objection from a highways perspective.

However, it is recommended that a condition be attached to ensure that nothing is planted or constructed on this land which would result in the obstruction of visibility from any direction. Any planting or vegetation should not exceed 60cm in height as secured by condition 3.

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Representations:

Sparsholt Parish Council: Object to application for the following reasons:

- Object to transferring the verge/ land proposed into private amenity as it would remove it from public amenity and control and there is no justification to do so.
- Concerns that the highways use of the land cannot be extinguished through Section 247 of the Town and Country Planning Act 1990 as no physical development is taking place.
- The impact of the development of the Conservation Area.

2 letters received objecting to the application for the following reasons:

- Impact on visibility from the junction and public footpath
- Loss of public amenity
- Impact on Conservation Area
- Highways rights have not been extinguished
- The land contributes to the sense of openness and having it in private ownership could put future pressure on the land in terms of enclosure and development.
- The change of use would downgrade the amenity value of the piece of the land
- No consideration has been given to the ownership of the land.

4 letters of support received for the following reasons:

- The area will not be built on, will be unchanged from what it is today and that no enclosures will be erected.
- No highways objections to the proposal

Relevant Planning Policy:

Winchester Local Plan Part 1 – Joint Core Strategy

Policy DS1 – Development Strategy and Principles

Policy CP13 – High Quality Design

Policy CP20 – Heritage and Landscape Character

Policy CP11 – Sustainable Low and Zero Carbon Built Development

Winchester District Local Plan Part 2 – Development Management and Site Allocations

Policy DM15 – Local Distinctiveness

Policy DM16 – Site Design Criteria

Policy DM17 – Site Development Principles

Policy DM18 – Access and Parking

Policy DM27 – Development in Conservation Areas

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National Planning Policy Guidance/Statements:

Section 4 of National Planning Policy Framework 2019
Section 16 of the National Planning Policy Framework 2019
Section 72 of Planning (Listed Building and Conservation Areas) Act 1990
Planning Practice Guidance

Supplementary Planning Guidance

High Quality Places SPD 2015
Sparsholt Village Design Statement
Sparsholt Conservation Area Appraisal 2008

Planning Considerations

Principle of development

Paragraph 47 of the NPPF requires that applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Whilst the application site is located within the defined settlement boundary of Sparsholt, in which the principle of residential development is acceptable, the Development Plan does not contain a specific policy which makes reference to the change of use of a piece of land to residential curtilage. The proposal is therefore considered on its own merits in terms of the impact of its operational change of use, its location in the conservation Area and within the general framework of protecting areas from inappropriate development.

The application site is located within Sparsholt Conservation Area. Policy DM27 of LPP2 establishes the principle of development within the District's Conservation Areas and allows for development proposals which conserve or enhance the character, appearance or special architectural/historic interest of the area in accordance with the Development.

Consideration should be given to whether the development would have a harmful impact on the visual amenities of the area including the Conservation Area, safety of the Highway or any other material or harmful impact from the use of the land.

Impact on character of area and neighbouring property

The application site is located within a defined settlement boundary, however Church Lane is a narrow lane which is semi-rural and is characterised by high banks and hedges as set out within Sparsholt Village Design Statement.

There is no physical change to the land, no boundaries or structures are proposed to be placed on it. Conditions 2 and 3 are attached to ensure this. Objections have been received in relation to the loss of this piece of public amenity land, however there are no changes, apart from the ownership, to the land and the visual amenity afforded by it to the overall green and rural character of the lane will be maintained. This piece of land is not identified within the Village Design Statement as a key area of open space and it is not designated as such under any Local Plan Policies.

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Allowing the land to become residential would enable residential permitted development rights and the general permitted development order could also give walls, boundary treatments and areas of hard surfacing deemed consent. Whilst the applicant confirms that there is no intention for any physical alteration to the piece of land, condition 2 removes Class E and F of Part 1; Schedule 2 of the General Permitted Development Order 2015 (as amended) for outbuildings and Class A of Part 2; Schedule 2 of the Order to ensure this.

As noted within the 'Principle' section of this report, the application site is located within Sparsholt Conservation Area. The following legislation and policies are taken into account in the assessment and determination of this planning application.

The preservation or enhancement of the character or appearance of the conservation area (S.72 P(LBCA) Act 1990; Policies DM27 & DM28 of the Winchester District Local Plan Part 2 Adopted 2017; Policy CP19 & CP20 Winchester District Joint Core Strategy; NPPF (2019) Section 16.

Under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, special attention should be paid to the desirability of preserving or enhancing the character or appearance of that area. As set out with the Sparsholt Conservation Area Appraisal and Strategy 2008, the Conservation Area is characterised by ancient lanes, sunk into the surrounding countryside, with high banks, hedges, and with open spaces and footpaths.

The proposal is therefore not considered to result in the erosion of character of the Conservation Area. Based upon the above assessment it is considered that the proposed development would conserve the character, appearance and historic interest of the Conservation Area in accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and in compliance with DM27 of LPP2, CP20 of LPP1 and para 16 of the NPPF and the historic environment section of the Planning Practice Guidance.

The proposed change of use is not considered to result in any significant impact on the character and appearance of Church Lane or the wider Conservation Area. The proposal is not considered to result in any harm to neighbouring amenity over and beyond the existing situation as there is no change in the way it will be used. The proposal accords with Policy DM15, DM16, DM17, DM27 of LPP2, Sparsholt VDS and Sparsholt Conservation Area Appraisal.

Highways

The proposal will not result in any physical change to the piece of land and visibility along the lane will not be affected. Condition 4 is attached to reflect this.

Concerns have been expressed in relation to highways rights being extinguished on the piece of land. The granting of planning consent for the change of use of the land would not automatically remove it from public amenity. The applicant would need to apply separately under Section 247 of the Town and Country Planning Act and the Parish would have the opportunity to have their concerns considered by the Secretary of State. However, the transference of ownership of the land is not a matter to be considered under this planning application.

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In addition, Hampshire County Council as a highway authority have not raised any highways objections to this application and there are no highways safety implications associated with the change of use. The proposal accords with Policy DM18 of LPP2.

Other Matters

Due regard should be given to the Equality Act 2010: Public Sector Equality Duty. Public bodies need to consciously think about the three aims of the Equality Duty as part of the process of decision-making. The weight given to the Equality Duty, compared to the other factors, will depend on how much that function affects discrimination, equality of opportunity and good relations and the extent of any disadvantage that needs to be addressed. The Local Planning Authority has given due regard to this duty and the considerations do not outweigh any matters in the exercise of our duty.

Conclusion

The proposal accords with the Development Plan and the following Policies: DS1, CP13, CP20 of Winchester District Local Plan Part 1, DM15, DM16, DM17, DM18, DM27 of Local Plan Part 2. The High Quality Places SPD 2015, Sparsholt Conservation Area Appraisal 2008 and Sparsholt Village Design Statement.

Recommendation

Permit subject to the following condition(s):

Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 91 (1) of the Town and Country Planning Act 1990 (as amended).

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) Class E and F of Part 1; Schedule 2 of the Order, Classes A of Part 2; Schedule 2 of the Order, no building, enclosure, wall, boundary treatment or hard-surfacing shall be erected surrounding the application site at any time unless approved in writing by the Local Planning Authority.

Reason: The area is situated within a rural area where natural boundary treatment positively contributes to the characteristics of the area.

3. Highways visibility shall be maintained at all times across the site and therefore at no time shall any residential paraphernalia be placed on the site or any planting be undertaken which shall exceed 60cm in height.

Reason: In the interests of highway safety.

Informatives:

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1. This permission is granted for the following reasons:

The development is in accordance with the Policies and Proposals of the Development Plan set out below, and other material considerations do not have sufficient weight to justify a refusal of the application. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning permission should therefore be granted.

2. The Local Planning Authority has taken account of the following development plan policies and proposals:-

Winchester District Local Plan Part 1 (2013): DS1, CP13, CP20

Winchester District Local Plan Part 2 (2017): DM15, DM16, DM17, DM27, DM18

Winchester District High Quality Places Supplementary Planning Document

Sparsholt Village Design Statement 1999

Sparsholt Conservation Area Appraisal 2008

3. In accordance with paragraph 38 of the NPPF (July 2018) , Winchester City Council (WCC) take a positive and proactive approach to development proposals, working with applicants and agents to achieve the best solution. To this end WCC:

- offer a pre-application advice service and,
- update applicants/agents of any issues that may arise in the processing of their application, where possible suggesting alternative solutions.

Appendix 1

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Comments for Planning Application 20/00771/FUL

Application Summary

Application Number: 20/00771/FUL

Address: Mountview Church Lane Sparsholt SO21 2NJ

Proposal: (Revised Highway Report received 09.06.2020)Change of use of existing highway verge to ancillary amenity land for Mountview, Church Lane, Sparsholt.

Case Officer: Verity Osmond

Customer Details

Name: Mrs Sparsholt Parish Council

Address: Bower Cottage, Peach Hill Lane, Crawley Winchester, Hampshire SO21 2PR

Comment Details

Commenter Type: Parish Council

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:At the Sparsholt Parish Council meeting on the 18th June the applicant attended via video link.

The applicant would ultimately like to own this piece of land through a change of use and by having the Highway Rights extinguished.

The fact that the applicant has maintained this piece of land for the past 35 years is irrelevant as "It is not possible to acquire publicly maintainable highway by adverse possession". The applicant was aware of these requirements when legal advice was sought in 2011. In addition all Sparsholt residents are encouraged by the Parish Council to maintain the verges and hedges and the vast majority do.

The Council considered the further information supplied by the applicants agent and unanimously agreed that they still do not support this application. The HCC report dated 17th June 2020 acknowledges that the applicant proposes no physical changes to the proposed land. This raises a question as to why he now wishes to change the use of this highway verge/land to ancillary amenity land.

The second point in the HCC statement of 17th June says "a 1m service margin will be maintained as public highway." This implies that Highways would allow the Highways Rights to be extinguished from the current applicant boundary to within 1m of the road. HCC do not have the right to anticipate that decision as Highway Rights can only be extinguished, where there is no development, through an appropriate legal process under S116 of the Highways Act 1980.

Sparsholt Parish Council strongly object to transferring the verge/ land proposed into private amenity as it would remove it from public amenity and control and there is no justification whatsoever to change the status quo. The Parish Council is not aware of any Policy that would support WCC effectively gifting the use of a public amenity land to a private individual.

The Parish Council have a statutory right to ensure that the Village Design Statement and

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Conservation area appraisal guidelines are adhered to. This piece of land is within the heart of the conservation area and any change whether now or in the future would have a significant effect on the character of this specific area.

It is noted that the Applicant in the latest Technical Note now no longer intends to change the Highway Rights using S116 of the Highways Act 1980 but intends to use S247 of the Town and Country Planning Act 1990 to put a Stop on the Highways use of the Land. This latter process can only be used where a development is proposed. As the Applicant has clearly indicated that there will be no development, this S247 process would not be applicable.

SPC understand that if planning permission is approved for the change of use (from highway verge/land to residential amenity land/garden) then it can only be implemented if a successful separate application for the extinguishment of the highway rights was made under the relevant legislation. Implementation of any planning approval can only be done once the highway rights have been extinguished. Because S247 of the Town and Country Planning Act 1990, as above, cannot apply the Condition to remove the Highways Rights must refer to S116 of the Highways Act 1980. If approved, how would WCC ensure this process, once conditioned would be complied with?

Finally, it is difficult to see how WCC could possibly support this application to gift the ancillary use of public amenity land to Mountview when Sparsholt Parish Council unanimously do not support this application for the reasons stated above and in our original submission.

We again request that should the case officer be of a mind to support this proposal the matter should be referred to the Planning Committee for our objections to be heard.