
Appeal Decision

Site visit made on 29 November 2016

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 February 2017

Appeal Ref: APP/X1735/W/16/3155488

Land to the rear of 178a West Street, Havant PO9 1LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr G Parrett (Grand Holdings) against the decision of Havant Borough Council.
 - The application Ref APP/16/00418, dated 20 April 2016, was refused by notice dated 20 June 2016.
 - The development proposed is construction of 9 dwellings with access from West Street following demolition of 178a West Street.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application is in outline with details of access and layout to be considered as part of the application whilst details of appearance scale and landscaping are matters reserved for future consideration. The submitted layout plan includes some details of areas of hard and soft landscaping. I have taken this drawing into account in my consideration of the layout of the proposal as this is a detailed matter for my consideration. However solely in relation to landscaping, I have treated this drawing as being only indicative or illustrative given that this is a matter reserved for future consideration.
3. The Council adopted the Havant Borough Local Plan Housing Statement on 7th December 2016. Further comments on this document have been sought from both the Council and the appellant and taken into consideration in my decision.

Main Issues

The main issues are:

- i) Whether the proposal represents an acceptable form of development having regard to flood risk and its flood zone location,
 - ii) The implications for the integrity of the Solent Special Protection Area.
 - iii) The effect upon highway safety,
 - iv) The effect upon protected species,
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- v) Whether the proposal would (a) safeguard the living conditions of the occupiers of neighbouring residential properties and (b) provide a satisfactory residential environment for future residents of the development.

Reasons

Flood risk

4. Flood zones 1, 2 and 3 are all applicable to different parts of the appeal site. The appellant states that the proposed dwellings would be sited within flood Zone 1, car parking is shown as being within Zone 3 with the access being within Zone 2 (rather than Zone 3 as referred to by the Council). I note that the Council's statement indicates that dwellings are proposed within Flood Zone 2, though from the evidence available this is not absolutely clear. In any case, whilst the appellant has sought to site the dwellings themselves where there is low flood risk, other areas within the site that would be used by residents would be at risk of flooding. The car parking area is shown as being with Flood Zone 3. The Sequential Test is therefore applicable in accordance with paragraph 101 of the National Planning Policy Framework ('the Framework'). It seeks to steer new development to areas with the lowest probability of flooding.
5. I find the information provided by the appellant regarding the reasonable availability of alternative sites for the proposed development to be rather limited. The Planning Practice Guidance states that in the first place it is the local planning authority's responsibility to consider if the sequential test has been satisfied, informed by evidence provided by the developer. In this case, little detailed information has been provided on the availability of other suitable sites across the Borough.
6. The Council's recently adopted Housing Statement identifies a range of sites in the area that could be available for development, including several within proximity of the appeal site, although without further detailed evidence of their circumstances it is not possible to ascertain this. Furthermore, whilst some are greenfield sites and they may also have associated infrastructure requirements, this does not mean that they cannot become available subject to the relevant planning process. Furthermore, in terms of the sequential test those located out of Flood Zones 2 and 3 would appear to be preferable on solely flooding grounds.
7. Whilst the appellant points to the need to provide further windfall sites, this does not necessarily mean that there are no other reasonably available sites for the proposed development. This has not been demonstrated by the appellant.
8. At the time of the determination of the application, the Council considered that it had a five year supply of housing land (as stated in its reasons for refusal). However, it has subsequently become clear that the Council is currently unable to demonstrate a five year supply of housing. It states that the current supply is 4.7 years which represents a fairly modest shortfall. I note the efforts being taken by the Council to provide the required housing land supply and the modest current shortfall. I also note that there are several housing sites identified for early release in the adopted Housing Statement. Therefore, in spite of the Council not being able to currently demonstrate a five year housing

supply, this does not rule out the possibility of other sites being reasonably available for the proposal, which are located outside of Flood Zones 2 and 3.

9. Therefore, applying the sequential test, from the evidence before me I am not satisfied there are no reasonably available alternative sites appropriate for the proposed development outside of flood zones 2 and 3. I have also taken into account that the scheme seeks to site the proposed residential buildings within areas of the site that have the least likelihood of flooding, with the areas at a high risk of flooding being free of the proposed buildings. Although the front gardens of the residential development would be within Flood Zone 2, Planning Practice Guidance indicates that residential development can be appropriate within Flood Zone 2, but that this is subject to the sequential test. With more evidence of the availability of other sites it may be that a different conclusion could be formed, but my determination on this matter is based on the information before me.
10. The Council's reason for refusal also refers to the proposal not demonstrating that it can provide a safe means of access and/or egress in the event of flooding and that there is no provision to improve the existing defences to the required standard.
11. The appellant's Flood Risk Assessment states that there would be a clear dry walkway from all plots out of the site for the 1:100 year storm, the furthest car parking space would be subject to a maximum depth of water of 142mm, and that residents would receive flood warnings and regular updates. The appellant has suggested an increase in the height of the access and parking area subject to the provision of a porous surface, noting that this has been permitted at another scheme. From the information before me I am not able to determine if such provision is appropriate or not in this instance. The evidence is therefore not conclusive, but given my overall conclusions on the merits of the appeal, such matters do not need further consideration in this case.
12. From the evidence before me, it has not been satisfactorily demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposal would result in unacceptable flooding risks and would conflict with the relevant flood risk aims of policy CS15 of the Local Plan and the Framework.

Solent Special Protection Area

13. The site is located within the 5.6km zone identified as being significant in potentially increasing recreational pressure upon the Solent Special Protection Area (SPA). On the basis of the evidence before me and acting in accordance with the precautionary principle, I am satisfied that the proposal in combination with other developments has the potential to result in significant adverse impact upon the SPA.
14. Policy DM24 of the Havant Borough Local Plan (Allocations) July 2014 ('Local Plan') requires that residential developments need to avoid or mitigate against a likely significant effect on the SPA. The Council seeks a contribution of £176 per dwelling towards the Solent Recreation Mitigation Partnership.
15. The appellant draws attention to the Government's Planning Practice Guidance stating that planning obligations should not be sought where they contribute to pooled funding intended to fund the provision of general infrastructure in the

wider area. The appellant goes on to argue that the required contribution would be towards a pooled fund and, as phase 3 of the mitigation strategy seeks funding towards infrastructure, the contribution is not required.

16. From the information before me it is not apparent that the measures sought would necessarily amount to infrastructure. The supporting text to policy DM24 of the Local Plan states that funded measures will include the provision of dog wardens and rangers to educate visitors and the *Solent Disturbance and Mitigation Project Phase III: Towards an Avoidance and Mitigation Strategy* sets out a range of mitigation measures, several of which do not appear to amount to the provision of infrastructure. In any case, the appeal proposal includes no relevant measures, including any s106 agreement, to mitigate against the likely adverse impact upon the SPA.
17. I am therefore unable to conclude that the proposal, in combination with other development, would not adversely affect the integrity of the SPA. In these circumstances, acting in accordance with the precautionary principle, I find the appeal scheme unacceptable in relation to this issue and policy DM24 of the Local Plan, policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 ('the Local Plan') and the Framework.

Highway safety

18. For vehicles exiting the site, visibility to the east would be likely to be frequently restricted by parked cars along the north side of West Street. The Council has advised that a variation of the existing Traffic Regulation Order (TRO) would be required to achieve the required sightlines and that confirmation of such variation could not be guaranteed. Given this uncertainty, and the absence of any detailed information as to how it could be achieved, I do not consider it appropriate in this case for the provision of a TRO to be reserved for a condition.
19. From the information before me, it has not been demonstrated how the appropriate sightlines could be achieved and the presence of parked cars close to the access would make visibility difficult. West Street appears to be a reasonably busy road. I therefore consider that the proposal would be likely to lead to significant highway safety concerns as vehicles would be required to move into the road in order to see any approaching traffic from the east. This would be likely to result in a significant risk of conflict between vehicles to the detriment of highway safety.
20. The appellant draws attention to the Council's approval of a hand car wash in 2012 where no highway objections were raised, though no details are provided of what the traffic generation of such a use would be in comparison to this appeal proposal which I have considered on its own merits.
21. The Council has also raised concerns regarding the internal roads and turning within the site, although such matters appear capable of resolution and do not alter my conclusions regarding the implications of the scheme for highway safety.
22. Based on the information before me the proposed development would be likely to be detrimental to highway safety. It would be contrary to the relevant highway safety aims of policy CS20 of the Havant Borough Local Plan (Core Strategy) 2011 and the Framework.

Protected species

23. The Council's objection on this issue is based upon there being insufficient information, including any ecological survey, to allow a full assessment of the impact on the ecology of the site. The Council is concerned that the site, containing semi-natural vegetation in close proximity to a watercourse has potential for legally protected species to occur.
24. The appellant states that the site has been used as domestic gardens for a number of years by owners of the adjoining houses and there are also areas of hardstanding. Nevertheless, from my observations at my site visit, large areas of the site are overgrown and there currently appears to be very limited use by residents.
25. Based on the, albeit limited information before me, there is a reasonable likelihood of protected species being present. In the event of there being protected species present, the construction of the proposed dwellings and hardstandings would result in a risk of them being adversely affected. In the absence of any survey, however, it is not possible to ascertain the likely impact.
26. Circular 6/2005 indicates that a survey should be carried out before planning permission is granted where there is a reasonable likelihood of a protected species being present and affected and that surveys should only be required by conditions in exceptional circumstances.
27. On this basis, the proposal would be contrary to the biodiversity protection aims of policies CS11 and DM8 of the Havant Borough Local Plan (Core Strategy) 2011 and the Framework.

Living conditions and residential environment

28. The Council's reasons for refusal refer to the proposal amounting to an overdevelopment of the site with a cramped and contrived layout. It goes on to clarify in its appeal statement that it does not consider that the proposal would harm the streetscene of the adjacent conservation area, but raises concerns regarding the acceptability of the internal layout of the scheme.
29. Existing terraced residential properties are located to the east and south of the site. The proposed terrace of properties (units 1-6) would back on to an existing parking/garaging area and adjacent allotments. Whilst the rear garden areas of units 5 and 6 would be small, they would still provide for, albeit somewhat constrained, areas of outdoor rear amenity space and no significant harm would result in this respect upon the living conditions of future occupiers.
30. In spite of the flood constraints upon the site, I consider it possible, utilising the remaining space within the site, to design an attractively landscaped scheme that would provide for an appropriate residential environment for future residents of the development.
31. The building comprising units 7-9 would be located adjacent to the rear elevations of adjacent properties in Staunton Road. The Design and Access Statement accompanying the application indicates that the development would be two storeys with rooms in the roof. This could result in adverse implications in relation to the outlook from the rear of properties on Staunton Road.

However, scale and appearance are matters reserved for future consideration and I am satisfied that the layout for units 7-9 could be satisfactorily achieved provided the building would not be of a height, scale and appearance that would result in unacceptable impacts upon the living conditions of the occupiers of properties in Staunton Road.

32. Similarly, unit 1 would be located in close proximity to the end of the rear gardens of adjacent properties on West Street. Depending on its height and scale, this could result in implications in relation to the outlook from the rear of the West Street properties. However, again, matters of scale and appearance are for future consideration.
33. I therefore consider that, subject to details of scale, appearance and landscaping, a detailed scheme is capable of being progressed that would not result in unacceptable harm to the living conditions of neighbouring residents and would provide for a satisfactory residential environment for future residents of the proposed development. On this basis, the proposal would accord with the amenity aims of policy DM16 of the Havant Borough Local Plan (Core Strategy) 2011 and the Framework.

Other matters

34. The proposal would provide for nine new dwellings in an accessible location close to local facilities and public transport options. The Council is currently unable to demonstrate a five year supply of housing land, currently estimating that it has a supply of 4.7 years. On this basis the shortfall is a fairly modest one. I have given the proposal's contribution to the local supply of housing moderate weight.
35. Whilst Guiding Principle 3 of the Havant Borough Local Plan Housing Statement promotes the development of brownfield land, this must be balanced against other planning merits such as highway safety, flood risk, habitat protection and nature conservation. Such matters in this case weigh against the proposal.

Planning Balance and Conclusion

36. I have found harm to result from the proposed development in relation to the likely harmful impacts upon the Solent Special Protection Area, flood risk, highway safety and with regard to the potential implications for protected species. Balanced against this is the contribution to the supply of housing, to which I have given moderate weight.
37. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The Council accepts that it is not currently able to demonstrate a five year supply of housing land (although states that the supply stands at 4.7 years on which basis the shortfall is a modest one)
38. In this context I consider that policies DM8, DM24 and CS21 of the Local Plan are relevant policies for the supply of housing as they act to constrain the supply of housing due to nature conservation considerations. However, as they are generally consistent with the habitat protection and nature conservation aims of the Framework, they still carry substantial weight. Furthermore, I also consider policy CS20 of the Local Plan to be a relevant policy for the supply of housing, as it potentially reduces the locations where residential development

can take place where highway restrictions are relevant. However, this policy also still carries substantial weight as it generally accords with the aims of the transport aims of Framework.

39. In circumstances where relevant policies are out-of-date, the Framework indicates that permission should be granted, unless there are specific policies in the Framework (such as those relating to Habitats Directives) which indicate that development should be restricted. Paragraph 19 of the Framework states that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being determined, as in this instance. I have found that the proposal would not accord with the Framework's habitats and nature conservation policy and it would also result in harm in terms of flood risk and highway safety.
40. Overall, therefore, the proposal does not represent sustainable development. It is contrary to the Local Plan and material considerations do not indicate that the proposal should be determined other than in accordance with the development plan.
41. For these reasons, the appeal should be dismissed.

David Cliff

INSPECTOR