

Appeal Decision

Site visit made on 4 January 2017

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

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

Decision date: 20th March 2017

Appeal Ref: APP/P2114/W/16/3155436

Land at former Upper Chine School, Lower Site, Luccombe Road, Shanklin Isle of Wight

- 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 Martyn Davies (Ryde School with Upper Chine) against the decision of Isle of Wight Council.
 - The application Ref P/01473/15, dated 2 December 2015, was refused by notice dated 4 February 2016.
 - The development proposed is 'the development of 6 detached houses, vehicular access from Luccombe Road, internal roads, parking provision, landscape works and associated ancillary works on the former Upper Chine School sports pitch (Lower Site), Shanklin'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Martyn Davies (Ryde School with Upper Chine) against Isle of Wight Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal application was submitted in outline with access only to be determined at this stage. Layout, scale, landscaping and appearance are matters for future consideration.
4. However, a proposed site layout is before me. It is indicated in the evidence that it is for indicative purposes only. I have determined the appeal accordingly.
5. Amended plans are before me, submitted at appeal. Those plans include further detail on the proposed access arrangements. As those plans do not significantly alter the appeal scheme, no party would be prejudiced by their consideration as part of this appeal. I have therefore taken them into account in its determination.
6. During the course of this appeal the Council approved an outline planning application for four dwellings at the appeal site, determining the proposed access; other matters reserved for future consideration¹. That scheme proposes a similar access arrangement to the appeal application. To that approved scheme I attach significant weight in determining this appeal. I have

¹ P/01148/16

the officer's report to committee and the decision notice before me, to which I have had regard.

Main Issues

7. On the basis of my findings above and the additional highway evidence submitted, the Council has confirmed that it does not intend to defend its fourth reason for refusal, relating to the proposed access. Therefore, the main issues in this case are, the effect of the appeal proposal on:
 - the character and appearance of the locality;
 - the living conditions of future occupiers, with regard to outlook, privacy, overshadowing and garden space; and
 - the habitat of protected species.

Reasons

Character and Appearance

8. The appeal site includes a roughly rectangular piece of land which fronts onto Luccombe Road. It historically formed part of a sports pitch for Upper Chine School and is now generally grass and scrub and includes some woodland and prominent trees. The land falls steeply from Luccombe Road and then falls more gently towards the cliff edge. The land immediately to the east of the appeal site extends to the cliff edge.
9. Either side of the appeal site there is development; flats on one side and houses on the other. There are generally houses on the opposite side of Luccombe Road. Development in the locality varies in its size, scale and orientation. However, it is generally detached buildings set within large grounds set back from Luccombe Road behind a landscaped area with planting and trees. The character and appearance of the locality is generally semi-rural and spacious, with a green and verdant feel.
10. The appeal site includes trees protected by a Tree Preservation Order TPO/2015/07. This includes a group of trees (G4) near to the entrance and the woodland towards the south of the site (W2). It also includes trees and planting on the southern boundary, partly within the appeal site (W3) and the area of planting and trees (W1) which sits near the cliff edge outside the appeal site.
11. The appeal site, its open spaces, woodland, trees and planting, particularly those along the road frontage, positively contribute to the character and appearance of the locality that I have identified.
12. The appeal development would be close to the road and would be more prominent in the street scene than other development nearby. As it would be so close to the road, it would reduce the green, planted and treed street frontage and would result in limited space for replacement semi-mature planting to soften its impact in the street scene, as suggested by the appellant. In addition, the proposed access road would involve engineering works which would materially alter the gradient of the land involved. Furthermore, the indicative layout proposes properties that would have a more formal arrangement and would be mostly closer together than other development in the locality. Even though the density proposed would not be out of step with

development nearby, some planting and most trees would be retained and there would be some new planting and some space between the proposed detached dwellings, the built form, together with the access road and hard surfacing around the proposed dwellings would, together, be likely to result in a tighter and more urban type of layout than the norm in the locality. Whilst I acknowledge that the proposed layout is indicative, no other way of laying out the appeal site is before me. Bearing in mind the constraints of protected trees and woodland and the cliff erosion zone, I am not convinced that the type of development proposed could be accommodated on the appeal site.

13. Moreover, I am unconvinced that the appeal development could be accommodated on the appeal site without a harmful effect on protected trees and woodland taking account of suggested replacement planting and tree and woodland management. Whilst I accept that some trees may not be good specimens or prominent, together with my earlier findings, the cumulative impact of the appeal would be likely to result in unacceptable harm. My concerns, in this regard, relate to the impact of the proposed access road in relation to protected trees within group G4 and the increase in land levels so close to them. Whilst I note the proposed use of arboreal sympathetic methods, as land levels would be likely to change so close to those protected trees, I remain unconvinced that some harmful impact on their future health would not be a consequence. I note the presence of a previous access road in the vicinity, but I observed on my site visit, that it is old and mainly overgrown, so attach limited weight to that matter. As those trees are near the entrance and large, an adverse impact on their health would diminish the green and verdant character and appearance of the locality. In such circumstances, I am not convinced that adequate space would be available to mitigate that loss and soften the impact of the proposed dwellings in street views.
14. In addition, the proposed access road would terminate close to the protected woodland (W2). Due to the gradient of the appeal site this would be likely to require excavation of the bank near to the woodland and some adverse impact on woodland trees and their health would be a likely consequence. Due to the siting of proposed plots, there would be limited space for replanting to mitigate that loss. In coming to this conclusion, I have had regard to the existing retaining structure roughly in this location and that excavation could be minimised through detailed design. I am also aware that Sycamore is generally tolerant of root pruning and minor ground disruption. However, as the existing structure would be unlikely to be adequate to hold the proposed bank, some excavation would still be likely. I have noted the potential for tree removal and replanting, particularly to grade the northern boundary of the woodland area, which would be a visual improvement, would improve tree diversity and potential habitat for protected species. The appellant also suggests that a net increase in the number of trees on the appeal site would result overall. However, due to the potential tree loss and damage to health identified, I remain unconvinced that harm to protected trees and the verdant feel of the appeal site would not result.
15. Also, as the proposed dwellings closest to the protected woodland would be on lower ground (indicative plots 2 and 6), some of those gardens would be in shade for part of the day, even on the basis of the appellant's evidence. The appellant accepts that some on-going pruning would be required but considers that it would not be detrimental to the woodland as a whole. However, I have

limited substantive information to come to that conclusion. The appellant suggests that future pruning or tree removal to protected trees could be controlled by the Council, but that does not remove the on-going pressure and requirement for such works. All in all, this matter adds to my concern regarding the impact of the proposed development on the verdant and green quality of the appeal site. In coming to this conclusion, I have taken into account the appellant's agreement to implement a management plan for the protected woodland if required and that any future management of the woodland would be to its benefit. However, for all of the above reasons, this does not overcome my concerns.

16. Notwithstanding the above, I accept that detailed design could ensure that internal spaces within the proposed units 2 and 6 would not be adversely affected by overshadowing. Also, I consider that there would be sufficient space to reroute the proposed drainage system along the southern boundary to ensure that no harm to protected trees would be a consequence; a matter that could be controlled by a planning condition.
17. Having come to these conclusions, I have taken into account that new garden areas would be created, greater tree diversity would be introduced and there would be a net increase in trees through new semi-mature planting. Whilst the appeal application is in outline and layout, scale, landscaping and appearance are reserved for future consideration, I have had regard to the indicative layout before me which does not demonstrate that adequate space would be available to mitigate the effect of possible tree loss and accommodate the layout of development proposed without adverse impact on the character and appearance of the locality.
18. I have had regard to previous Council approvals and appeals decisions, in this regard, brought to my attention². However, none replicate the circumstances of this appeal.
19. I conclude, therefore, that the appeal development does not demonstrate that it would not harmfully affect the character and appearance of the locality. For this reason, it would fail to accord with Island Plan Core Strategy (CS) Policies DM2 and DM12. Those policies, together, support proposals for high quality and inclusive design that would conserve, enhance and promote the landscape, seascape, biodiversity and geological interest of the Island.

Living Conditions

20. The proposed scheme indicates two rows of detached houses in its indicative layout. Appearance is a reserved matter for future consideration and so the size and position of windows and doors is not defined at this stage. Whilst I acknowledge that proposed plots 1 and 2 would be split level and on higher ground than the rest, I consider that the appeal site would enable a layout of dwellings that would provide sufficient separation distances between to ensure an acceptable outlook from each. It would also be likely to enable a layout in which the bulk of the proposed dwellings would not appear overbearing when viewed from within the individual units. It would also be possible to design window and door openings, at detailed design stage, to avoid harmful overlooking between the proposed dwellings.

² APP/T0355/A/14/2218756; APP/U1240/A/15/3007484

21. The proposed gardens to plots 1 and 2 are shown on the indicative layout between those two dwellings. Those proposed gardens would be large and regular in shape and would provide adequate usable outdoor space. Furthermore, taking into account the size of those proposed gardens and the separation distances from neighbouring dwellings, I consider that dwellings could be designed with windows and door openings that would avoid harmful overlooking into those gardens.
22. On the basis of my previous findings, some of the gardens to proposed plots 2 and 6 would be in shade for part of the day. However, as each would have areas of garden, some at a raised level, which would not be harmfully affected by shade, overall, that matter would not result in unsatisfactory living conditions, even though I have found that it may result in future pressure to prune or remove protected trees.
23. I conclude therefore that overall, the appeal proposal has demonstrated that it would provide satisfactory living conditions for future occupiers, with regard to privacy, outlook, garden space and overshadowing. It would, therefore, in this regard, accord with the CS Policy DM2, which supports high quality and inclusive design.

Habitat of Protected Species

24. The Council raises concern regarding the effect of the appeal proposal on the natural habitat of hazel dormice, which is a protected species. The presence of that protected species at the appeal site is undisputed. The appellant suggests that the dormice population on the Island is strong and abundant, the numbers of dormice likely to be accommodated on the appeal site limited and that the appeal site would be likely to provide suitable habitat for dormice in the short term only, if properly managed. Further, it suggests mitigation to include, staged removal of habitat to avoid sensitive periods, a new native hedgerow along the eastern boundary of the appeal site providing a linkage between the wooded boundaries to the north and south and the provision of nesting boxes. In this regard, I take a similar view to that of the County Ecologist, that such mitigation, in these circumstances, would overall be likely to avoid harm to protected species, providing appropriate safeguards that could be controlled by condition. I am unconvinced, therefore, that it has been demonstrated that there would be a detrimental effect on protected species.
25. In coming to this conclusion, I have had regard to the views of my Colleagues in determining appeals on different sites. Whilst they do not provide direct comparisons to the appeal site and development, I have generally concurred with those views. (APP/U2235/W/14/2227572; APP/Z0116/W/15/3133034; APP/J0540/W/15/3014912).
26. All in all, for these reasons, I conclude that the appeal development would generally preserve biodiversity and a protected species. For this reason, it would generally accord with CS Policy DM12. In these circumstances, I do not have to consider any further test. However, as the appeal fails on another substantive issue, this matter is not determinative in this case.

Other Matters

27. In coming to the above conclusions, I have had regard to the provision of additional housing, on a deliverable site, which would meet an identified need

within the emerging Bay Key Regeneration Area, in which the appeal site is located. I have had regard to the benefits of optimising the potential of the site to accommodate development and am aware that the most recent Strategic Housing Land Availability Assessment (2015) indicated that the appeal site could accommodate more units. However, I agree with the two main parties that further design work has indicated that a lower number is appropriate.

28. I have taken into account the other social, economic and environmental benefits of the appeal development including provision of jobs, income and support to employment generated by future occupiers, new planting and the use of sustainable construction and management. I have had regard to development recently approved³ on another site owned by the appellant, but I have determined this appeal on its own merits.
29. I have noted the appellant's concern regarding the way in which the appeal application was determined, and that the Council approved a TPO when determining it, but this is in the main a matter between the Council and appellant in the first instance.

Conclusion

30. For the above reasons, and taking all other matters raised into consideration, I conclude that the appeal should be dismissed.

R Barrett

INSPECTOR

³ P/01603/14