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## Appeal Decision

Site visit made on 10 October 2018

**by I Bowen BA(Hons) BTP(Dist) MRTPI**

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

**Decision date: 14 March 2019**

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**Appeal Ref: APP/L1765/W/18/3194670**

**Land adjacent to Seven Oaks, Clewers Hill, Waltham Chase, Hampshire SO32 2LN**

- 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 Philip Farminer against the decision of Winchester City Council.
  - The application Ref 17/00707/OUT, dated 10 March 2017, was refused by notice dated 31 July 2017.
  - The development proposed is the erection of a single, detached, 'self-build' dwelling and garage with all matters reserved.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a single, detached, 'self-build' dwelling and garage with all matters reserved at land adjacent to Seven Oaks, Clewers Hill, Waltham Chase, Hampshire SO32 2LN in accordance with the terms of the application, Ref 17/00707/OUT, dated 10 March 2017, subject to the conditions set out in the attached Schedule.

### Preliminary Matters

2. The planning application sought outline planning permission with all matters reserved for subsequent consideration. An indicative proposal plan was submitted with the planning application showing a possible development layout. Whilst indicative, I have nevertheless taken it into account as a helpful guide as to how the site might be developed.
3. The Local Planning Authority's (LPA) second reason for refusal was on the basis that the planning application failed to protect and enhance biodiversity by failing to make appropriate mitigation for harm to habitats of European significance. During the course of the appeal, the appellant submitted an executed Unilateral Undertaking (UU.2) which sought to make appropriate contributions to fully mitigate the harm that would be likely to arise from the development. I sought the views of the main parties on this matter and the LPA indicated that the proposed contribution would comply with relevant Development Plan policies. Nevertheless, having regard to the Conservation of Habitats and Species Regulations 2017 (the HR) I consider it necessary for me to address this matter as a main issue.

4. The appellant also submitted a further executed Unilateral Undertaking (UU.1) which, in addition to the above planning obligation, would require the development to be restricted to be a self-build/custom housebuilding scheme. I consider this matter under the first main issue as described below.

### **Main Issues**

5. The main issues are whether the proposed development would (i) be an appropriate form of development having regard to local policies on the location of housing with respect to accessibility to services and its effect on the character and appearance of the area and (ii) whether alone or in combination with other development in the area be likely to have a significant effect on designated habitats; and if so, whether the effects would be capable of being adequately mitigated.

### **Reasons**

#### *Location of development*

6. Clewers Hill is a tree and hedge-lined street lying on the north western edge of Waltham Chase. There are a number of detached dwellings on both sides of the road and also some commercial occupiers located along and off this road, affording the area a mixed, but green and spacious character.
7. The overall locational strategy of the Development Plan is set out in the adopted Winchester District Local Plan Part 1 – Joint Core Strategy (March 2013) (LPP1) Policy DS1. This policy aims to improve the economic, social and environmental conditions in the area by locating development in sustainable locations to meet local needs, subject to rural character and individual identity being maintained.
8. In line with this approach, Waltham Chase is identified in LPP1 Policy MTRA2 and the adopted Winchester District Local Plan Part 2 – Development Management and Site Allocations (April 2017) (LPP2) Policy DM1 as a “Larger Village”. Specifically, it performs a role as a focal point for its community and surrounding area.
9. To this end, LPP1 Policy MTRA 2 and LPP2 Policy DM1 permit appropriate development within the defined boundaries of settlements. Outside the settlement boundaries, development is only permitted where an assessment of capacity shows that it is needed or where it would realise a community aspiration identified through a neighbourhood plan or other community-based initiative.
10. The appeal site lies outside, but directly adjoining, the defined settlement boundary for Waltham Chase. Whilst the appellant submits that the scheme would meet a community need through the provision a self-build unit, it seems to me that LPP1 Policy MTRA2 requires such proposals to have been made following a process demonstrating community support in order to be justified outside settlement boundaries. Such a process has not taken place in relation to this appeal proposal.
11. The site therefore, for development plan purposes, is located in the countryside where LPP1 Policy MTRA4 only permits development which, amongst other considerations, has an operational need for a countryside location or would involve then re-use or redevelopment of existing buildings. None of those

circumstances apply in this case and the proposal would therefore conflict with LPP1 Policy MTRA 2 and Policy MTRA 4 and LPP2 Policy DM1.

12. The site also falls within an area formally designated as a "Settlement Gap" in adopted LPP1 Policy CP18. This is one of a number across the District designated to help define and retain the separate identity of settlements. To this end, that policy requires the retention of the generally open and undeveloped nature of the land, resisting development that would physically or visually diminish the gap. The Settlement Gap in this case is sizeable and essentially seeks to safeguard the sense of separation between Waltham Chase and settlements lying some way to the north, east and south.
13. The development would be sited within a narrow "finger" of land on the western periphery of the designated Settlement Gap part way along Clewer's Hill, occupying a space between two existing detached dwellings. To the rear, it is enclosed by a substantial hedge, beyond which is a car park and buildings associated with large commercial premises. For all practical purposes therefore, it would be seen in the street scene as a development in a gap in an otherwise built up frontage, which could be proportionate in size to its plot and consistent with the character and appearance of other properties in the wider area. Furthermore, the development of the site would appear visually and functionally as part of the fabric of the built-up area of Waltham Chase rather than the countryside.
14. Given the enclosed nature of the site and its close functional and visual relationship with the built-up area, the development would not, to my mind, materially diminish the Settlement Gap either physically or visually. It would not, therefore, conflict with LPP1 Policy CP18. Consequently, insofar as the proposal would accord with that policy, the proposal would also comply with LPP1 Policy DM23 which requires development outside of settlement boundaries which accord with the Development Plan to be acceptable with regard to its effect on rural character and sense of place with reference to visual intrusion, physical features, tranquillity and enjoyment of the outdoors.
15. Whilst the application was in outline, the scale and configuration of the site is such that I have no reason to doubt that a dwelling could be built to a high design standard which would be consistent with the character and appearance of the area. Moreover, leaving aside any effects on internationally designated nature conservation sites which I consider below, the proposed development would not, subject to appropriate conditions, give rise to any unacceptable planning harm in terms of site-specific countryside, environmental, amenity or heritage constraints.
16. The location of the proposed development within the built fabric of the village would also, to a limited extent, assist in supporting services and facilities which would be accessible to future occupiers by a choice of modes of transport.
17. Furthermore, I am mindful that the proposed development would contribute a limited but nonetheless positive benefit in terms of providing an additional single dwelling to local housing supply. This could be a self/custom-built unit for which there is an identified unmet local need. Whilst this would be a further benefit, on the evidence before me I do not consider it necessary that the development should be restricted as such in order to be acceptable in planning terms. In this regard, I have not ascribed any weight to the executed UU.1. in determining this appeal.

18. I therefore consider the benefits of the proposal, although limited, to be material considerations. In this case, in the context of the absence of any identifiable planning harm, such benefits would outweigh the technical conflict with LPP1 Policies MTRA 2, MTRA 4 and LPP2 Policy DM1 resulting from the site's location immediately outside the settlement boundary.
19. In reaching this view, I have had regard to an appeal decision at Church Lane, Colden Common<sup>1</sup>. In that case, the Inspector had similarly concluded in dismissing the appeal that the scheme was in conflict with the locational policies of the Development Plan given its siting outside the defined settlement boundary. However, I note that proposal was for a major scheme of up to 21 dwellings in an area described as being in an open and undeveloped landscape setting which would give rise to substantial harm to the character and appearance of the area. The circumstances relating to that proposal therefore strongly contrast with those of the appeal proposal before me and I therefore do not regard the two cases as being reasonably comparable.
20. Drawing this main issue together therefore, I conclude that the proposed development would conflict with LPP1 Policies MTRA2 and MTRA4 and LPP2 Policy DM1, in providing residential development outside a settlement boundary and therefore, by definition, in the countryside.
21. However, the proposal would not materially diminish the designated Settlement Gap in any practical sense and would therefore accord with LPP1 Policy CP18. In this context, the proposal would also comply with Policy DM23 in avoiding any unacceptable effect on rural character.
22. I attach some limited weight to the fact that the proposed development would accord with the overall aims of LPP1 Policy DS1 in promoting sustainably located development and would produce some, albeit limited benefits in housing terms and in being accessible to and supporting local services and facilities.
23. Taking all of the above into account I consider, overall, that the benefits of the proposal, in the context of the absence of any identifiable planning harm, are material considerations which are sufficient, in this case, to outweigh the conflict with the Development Plan policies as identified above. Given the particular circumstances of the site, I am satisfied that my decision will not set any harmful precedent for any future proposals outside settlement boundaries, the merits of which would need to be considered on a site-specific basis.
24. Similarly, whilst paragraph 79 of the National Planning Policy Framework (the Framework) does not state that development is necessarily acceptable in non-isolated locations, the proposed development would be well related to an existing built up area and so would not conflict with this national policy.
25. Whilst the LPA has also referred to LPP1 Policy MTRA3, that policy only applies to infill developments proposed in named 'other' settlements in the market towns and rural area and has therefore not been determinative to this appeal.

### *Designated Sites*

26. The site is within 5.6km of the Solent coastline. As such, it is necessary for me to consider any significant effects that the development may have on: the

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<sup>1</sup> APP/L1765/W/16/3165007

Chichester & Langstone Harbours Special Protection Area (SPA), the Portsmouth Harbour SPA and the Solent and Southampton Water SPA (the designated sites). These designated sites are protected by the European Habitats Directive and, in turn, through domestic legislation in the HR. In the light of a recent judgement of the European Court of Justice<sup>2</sup>, it is necessary that I firstly consider through a screening exercise whether the development would, alone or in combination with others, have a significant effect on the designated sites; and if so, secondly to undertake an “appropriate assessment” (AA).

27. The significance of the judgement is that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a designated site at the screening stage, for example the financial obligation contained in the UU.2 for the management of habitats.

#### Screening Exercise

28. The Solent coast is internationally important in providing mudflats, shingle and saltmarshes which are essential feeding and roosting habitats for overwintering birds. The area attracts 90,000 waders and more than 10% of the world’s population of Brent Geese.
29. The Solent also attracts substantial numbers of recreational visits every year which has the potential, particularly through dog walking, to disturb the birdlife. Particular threats posed by such disturbance include birds being displaced, thereby forgoing feeding time and needlessly expending energy as well as increasing competition for access to undisturbed food-rich areas. Migrating birds rely on these habitats to build up energy reserves to undertake their return journeys and to breed and a consequence of them not being able to do so would be a reduction in their overall population.
30. Additional pressures in this regard will arise as a result of new house building. Accordingly, I consider that occupation of the proposed development would be likely to increase recreational pressures on the SPAs and, either alone or in combination with other development in the area, would have a significant effect on them. It is therefore necessary for an AA to be undertaken.

#### Appropriate Assessment

31. Having concluded that AA is necessary, it is permissible for me to have regard to any proposed avoidance or mitigation measures. Accordingly, I had had regard to Bird Aware Solent’s Recreational Mitigation Strategy<sup>3</sup> (SRMP) and Winchester City Council’s Interim Solent Recreation Mitigation Partnership Strategy: Guidance to Applicants (August 2014). Whilst this latter document is described by the LPA as a Supplementary Planning Document, I have seen no confirmation that it has been formally adopted as such. Nevertheless, it provides useful technical guidance consistent with that set out in the SRMP.
32. The SRMP has been prepared by a partnership of local authorities and conservation bodies including Natural England and has been the subject of public consultation. It seeks to provide a strategic mechanism to secure mitigation, in perpetuity, for the additional disturbance to birds as a result of house building around the Solent.

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<sup>2</sup> People over Wind, Peter Sweetman V Coillte Teoranta, Case C-323/17

<sup>3</sup> Solent Recreation Mitigation Strategy, December 2017.

33. Specific measures include: a team of rangers, communications, marketing and education initiatives, initiatives to facilitate and encourage responsible dog walking, codes of conduct, site-specific visitor management and bird refuge projects, new/enhanced strategic green space, a delivery officer and monitoring to help adjust to mitigation measures as necessary.
34. New and enhanced strategic green spaces are funded directly through local authority and other forms of capital funding, whilst the remaining non-infrastructure costs are met through developer contributions.
35. To this end, I have had regard to the planning obligation contained within the executed UU.2 for the management of the SPAs. This makes provision for a financial contribution at reserved matters stage in accordance with a payment set out in the SRMP with appropriate inflation indexation.
36. I have sought the views of Natural England on this matter and it has confirmed its view that, subject to the appropriate financial contribution being secured, the proposal would mitigate against the potential recreational impacts of the development on the designated sites.

#### Conclusions on the effects on Designated Sites

37. Having undertaken a necessary AA and sought the views of Natural England, I conclude that whilst the development in combination with others would have a significant effect on the designated sites, the effects would be fully mitigated through the necessary payment of the developer contribution through the executed UU.2. The proposal would therefore accord with LPP1 Policy CP16 which, amongst other matters, supports development which protects sites of European importance. Whilst the LPA has also cited Policy CP15 in response to my seeking views on this matter, I have not been provided with a copy of that policy and it would not appear to be relevant to designated sites.

#### **Other matters**

38. Third party objections have been raised in relation to the effects of the proposed development on highway capacity and safety. However, I note the LPA is satisfied that adequate visibility splays can be achieved and that no other significant highway effects would be likely to arise as a result of the development. Based on the evidence before me, I see no reasons to disagree and this matter has not been determinative in my decision.

#### **Conditions and Conclusions**

39. In addition to the statutory period for the submission of reserved matters, the LPA has suggested 4 conditions be imposed. I have considered these against the tests in paragraph 55 of the Framework and the Planning Practice Guidance. However, matters of landscaping and materials can properly be the subject of subsequent approval as reserved matters. In this regard, I have been provided with no clear reasons as to why it would be necessary to impose conditions specifying the detail of those matters at this outline stage. I have therefore amended the relevant conditions accordingly.
40. The LPA also requested conditions firstly requiring the submission of details for drainage and secondly for energy/water efficiency in compliance with the Code for Sustainable Homes. However, I have been provided with no evidence which would demonstrate that such matters would be necessary in order to make the

development acceptable in planning terms. I have therefore not imposed such conditions.

41. In conclusion, whilst the proposed development would not accord with development plan policies on the location of development it would accord with the overall aims of those policies, would not compromise the settlement gap or otherwise give rise to any identifiable planning harm. The scheme would produce benefits, albeit limited, and would not otherwise give rise to any planning harm, including fully mitigating any harmful ecological effect on designated European sites. Accordingly, subject to necessary conditions, the appeal is allowed.

*Ian Bowen*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the access, appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.