



Appeal Decision

Site visit made on 7 August 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2019

Appeal Ref: APP/A1720/W/19/3221884

246 Botley Road, Burridge, Fareham SO31 1BL

- 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 Ford of Amici Developments against the decision of Fareham Borough Council.
 - The application Ref P/18/0347/OA, dated 26 March 2018, was refused by notice dated 18 September 2018.
 - The development proposed is the erection of eight detached dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application has made in outline with details of access and layout for consideration at this stage and matters of appearance, landscaping and scale reserved.
3. A signed and dated Unilateral Undertaking (UU) has been submitted to seek to mitigate the recreational impacts from the new housing on the Solent and Southampton Coastal Special Protection Area (SPA) and to secure open space provision as a green buffer on the bottom section of the site. I will return to these matters later but I have no reason to believe that the UU would not address the second and third reasons for refusal.
4. Since the Council refused the proposal, Natural England (NE) has published advice on achieving nutrient neutrality for new developments in the Solent region¹. This document has been drawn to my attention and NE is currently advising that there is uncertainty as to whether the waste water arising from new housing in the Solent area will have an adverse effect on protected wildlife sites.
5. NE has advised in respect of this proposal, the European designated sites that would be potentially affected by waste water from the proposed development are the Solent and Southampton Water SPA and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Chichester and Langstone Harbours SPA and Ramsar site, Solent Maritime Special Area of Conservation (SAC) and the Dorset and Solent Coast potential SPA (the habitats sites).

¹ Natural England - Advice on Achieving Nutrient Neutrality for New Development in the Solent Region – June 2019.

6. I note that the appellant has commented that this was not considered as part of the application, does not form a reason for refusal and has not had the opportunity to address the concerns. It is argued that the matters raised by NE are not material considerations in this appeal and are therefore not relevant. Nevertheless, the appellant has also set out calculations to seek to demonstrate that the site would be, at least, nutrient neutral.
7. I have a duty as the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) to consider whether the proposal would be likely to have a significant effect on the integrity of designated habitats sites in the area and therefore the matters raised by NE are ones that must be considered.
8. I am satisfied that both main parties and NE have been given the opportunity during the appeal process to comment on these matters and therefore would not be prejudiced by my consideration of them.

Main Issues

9. In the light of the above, the main issues are:
 - the effect of the development on the integrity of the habitats sites , and
 - whether the proposed location of the development is acceptable having regard to the character and appearance of the area and development plan policies.

Reasons

Habitats sites

10. NE advise that the water environment within the Solent region is one of the most important for wildlife in the United Kingdom and, in this respect, the Solent is internationally important. NE indicate that there are high levels of nitrogen and phosphorus input to this water environment with sound evidence that these nutrients are currently caused mostly by waste water from existing housing and agricultural sources and the resulting dense mats of green algae are impacting on the Solent's protected habitats and bird species.
11. There is uncertainty at the present time as to whether new residential development will further deteriorate the protected sites. NE indicate that one way that to address this uncertainty is for new development to achieve nutrient neutrality. NE advise that achieving nutrient neutrality may be difficult for smaller developments. I also appreciate that this matter has arisen during the processing of the appeal, nevertheless, the issue needs to be examined based on the information before me.
12. It is NE's view, set out in the general advice, that there is a likely significant effect on the internationally designated sites (Special Protection Areas, Special Areas of Conservation, potential Special Protection Areas) due to the increase in waste water from the new developments coming forward.
13. The appellant has set out a case with calculations to seek to demonstrate that the equestrian use of the vast majority of the grazing land on the site would produce more nitrogen per hectare in this use than from the waste water resulting from the 8 dwellings. I have consulted NE on this evidence and they have responded to advise that the calculations have not been completed in

their totality in accordance with the methodology and, therefore, that the scheme does not represent nitrate neutrality. Accordingly, in respect of this matter, I cannot be certain that the proposal would not, in combination with other developments, significantly and adversely affect the integrity of the habitats sites.

14. The Council has been working with other bodies, including NE, on mitigation measures to address the nitrogen issue. The Council has published an Interim Nitrogen Mitigation Solution and this sets out a number of potential proposals which may be able to provide a solution to this issue. In the meantime, the Council is recommending that in any approval a Grampian condition could be attached such that the housing would not be occupied until a mitigation package addressing the additional nutrient input arising from the development has been submitted to and approved by the Local Planning Authority. The appellant is agreeable to the imposition of a Grampian condition to address this matter.
15. However, while the proposed mitigation measures appear promising and that work with partners is progressing to find solutions, the Council has explained that they presently have no timetable for this strategy to be completed. Some of the options, such as the creation of wetlands and the improvement to the Peel Common waste water treatment works, could potentially take some time to work through and become operational as part of a solution.
16. Based on the evidence before me, there appears to be uncertainty as to when a solution to address the nitrogen arising from the proposal would be in place. In these circumstances, I consider that I need to take a precautionary approach and that it would not be reasonable to attach a Grampian condition when I am not satisfied that the mitigation strategy would be in place within the time limit imposed on a permission or the situation may be that the dwellings would be built with no immediate prospect that they could be occupied.
17. In terms of the approach set out in the Habitats Regulations, while the information is that the proposal would provide housing to meet an identified requirement, I have not been provided with evidence that this is the only solution available to meet the housing needs in this case and that there are no other sites that could be demonstrated to be nutrient neutral. Furthermore, taking into account the merits of the case, I do not consider that there are imperative reasons of overriding public interest which would justify permitting the development.
18. On a further matter, the evidence also indicates that the site is located within the zone of recreational influence for the Solent and Southampton Water SPA. The Solent Recreation Mitigation Strategy (SRMS) advises that the Solent coast, particularly its mudflats, shingle and salt marshes, provide essential winter feeding and roosting grounds for birds that spend winter in the area. The wide range of recreational activities which take place on the coast can result in disturbance to the birds, albeit often unintentional, and this can ultimately adversely affect the bird populations.
19. The SRMS aims to prevent bird disturbance from recreational activities in a strategic way. There is a contribution required for every net additional dwelling within the 5.6km zone unless it is demonstrated that bespoke proposals to fully mitigate the impacts of recreational impact from the development would be provided.

20. The appellant has provided a signed and dated UU that provides the necessary financial contribution in accordance with the SRMS to mitigate the impacts from recreation. NE has previously advised that this would address this matter and with this mitigation secured, I am satisfied that this recreational impact would be satisfactory addressed and comply with the requirements of Policy DSP15 of the Fareham Local Plan Part 2: Development Sites and Policies (adopted June 2015) (the Local Plan).
21. While the recreational pressures could be mitigated, I am not satisfied that this would be the case in respect of the impacts arising from the additional waste water from the residential development. Taking all the above matters into account, when undertaking an Appropriate Assessment, I conclude that the proposal would, alone or in combination with other developments, be likely to significantly and adversely impact on the integrity of the habitats sites and, as a consequence, this is a reason to withhold approval.

Location of development

22. Policy CS14 of the Fareham Local Development Framework: Core Strategy (adopted 2011) (the Core Strategy) states that built development on land outside the defined settlements will be strictly controlled to protect the countryside from development and lists acceptable forms of development including that essential for agriculture, forestry, horticulture and required infrastructure.
23. Policy DSP6 of the Local Plan sets out a presumption against new residential development outside of the defined urban settlement boundaries as identified on the Policies Map, subject to some specified exceptions.
24. The evidence indicates that the site is located outside the urban settlement boundary. The housing would not meet with any of the exceptions listed in the Policy CS14 of the Core Strategy or Policy DSP6 of the Local Plan and therefore the scheme would be contrary to the strategy for the location of development in this respect.
25. However, the Council accept that it cannot demonstrate a 5 year housing supply of deliverable sites. In these circumstances, Policy DSP40 of the Local Plan is engaged. The policy allows, subject to meeting the relevant policy criteria, additional housing sites outside the urban area boundary, notwithstanding any conflict with the Policy CS14 of the Core Strategy and Policy DSP6 of the Local Plan. Consequently, I consider that Policy DSP40 is the most relevant to the consideration of the proposal and if the policy criteria would be met it would help demonstrate that the location of the housing would be satisfactory.
26. The Council do not highlight any substantial conflict with criteria i, ii, iv, and v of Policy DSP40 of the Local Plan. In terms of these criteria, the site would be well related to the adjoining settlement boundary of Whiteley and would be well integrated to this and surrounding built areas by footways in such a way that future occupiers of the development would not be wholly dependent on the private vehicle to access services and facilities. The 8 units proposed would be relative in scale to the demonstrated 5 year housing land supply shortfall and the indications are that there is no technical reason, in terms of the site itself, why the housing would not be deliverable in the short term. In terms of the effect of the proposal on the immediate site and surroundings, based on the

evidence before me, there would not be any unacceptable environmental, amenity or traffic implications. As a consequence, I find no substantive conflict with these criteria of Policy DSP40.

27. The Council set out in their statement that the proposal would fail criterion iii of Policy DSP40 which requires that the proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, the Strategic Gaps.
28. While outside the settlement boundary of Whiteley, the site is experienced in association with the reasonably closely spaced residential properties of Botley Road and the housing development of Caigers Green. The woodland strip broadly to the east provides an important feature in the landscape and there are public views across the site from the footpath that runs alongside the northern boundary.
29. The development of the site with 8 dwellings would change the character of the open space to a more suburban appearance. However, the buildings would be adequately spaced across a reasonably sizeable site which would allow opportunities for structural landscaping to soften the impact of the buildings. The layout plan shows an eastern section of the site would become public open space to align with the woodland strip and this would strengthen this important feature and the positive influence it makes to the character of the area.
30. The Caigers Green development shows that housing behind Botley Road forms part of the area and the present scheme, with its opportunities for landscaping, would assimilate satisfactorily into the overall grain of the area without undue harm.
31. The land does not form a Strategic Gap and the scheme would meet the requirements of criterion iii of Policy DSP40 as it is sensitively designed to reflect the more positive aspects of the character of the neighbouring settlement and minimises the impact on the countryside. Consequently, the scheme would comply with Policy DSP40 of the Local Plan.
32. In the light of the above, the development would not comply with Policy CS14 of the Core Strategy and Policy DSP6 of the Local Plan. However, Policy DSP40 of the Local Plan is engaged and the proposal would, amongst other matters, have an acceptable impact on the character and appearance of the area. Therefore, I conclude that there would be overall compliance with the development plan approach to the location of development in the circumstances where the Council cannot demonstrate a 5 year supply of deliverable housing sites. Furthermore, I also conclude that the details of the scheme would comply with Policy CS17 of the Core Strategy requiring high quality design, as far as can be demonstrated at this outline stage.

Other Matters

33. I have taken into account the letters of objection and support in respect of the proposal. In particular, I have noted the concerns with the ecological implications and highway safety.
34. The site has been the subject of ecological reports and comments from the County Council Ecologist who ultimately did not raise an objection to the scheme in this respect. After looking at all these matters, and noting that this

issue did not form a reason for refusal, I have found no substantive reason to disagree with the Council's conclusions on this matter.

35. The proposal would involve an access and a separate egress from the development site. There have been substantial local concerns expressed regarding highway safety, especially the provision of the visibility splay at the egress. I have taken into account all the matters raised including the Road Visibility and Speed Assessment submitted by an interested party. However, it appears that the Council Transport Planner examined this matter in detail at the application stage and it was concluded that the proposed access arrangements and increased activity from the development would not cause harm to other road users or pedestrians. Again, this matter did not form a reason for refusal and I have found no conclusive or technical reason to disagree with the professional view of the Council's officers in this respect.

Planning Balance and Conclusion

36. The scheme would provide a meaningful contribution towards housing delivery in a Council area that cannot demonstrate a 5 year housing land supply. The National Planning Policy Framework (the Framework) seeks to significantly boost the supply of housing and that small and medium sized sites, such as the proposal, can make an important contribution to meeting the housing requirements of an area. The information indicates that the housing could be delivered relatively quickly. Furthermore, there would be economic and social benefits during construction, and in subsequent occupation. The site has reasonably good access to local services and facilities which would reduce the reliance of future residents to be dependent on a private vehicle for all journeys.
37. I have found that the scheme would meet the overall locational approach to housing within the plan area, in a policy situation where there is an absence of an identified 5 year housing land supply. Also, the proposal would have an acceptable impact on the character and appearance of the area. All these are matters that weigh in favour of the proposal. Given that 8 dwellings are proposed, and having regard to the level of housing land supply deficit, cumulatively I attribute these benefits moderate weight.
38. The provision of the green buffer that would strengthen the area of woodland and public open space is an important part of the proposal. The provision of this area through the UU meets the tests of paragraph 56 of the Framework. I attach this obligation moderate weight in the overall consideration of benefits of the scheme as to some extent it would be necessary to assimilate the development into the character of the area.
39. The obligation to address the recreational affect arising from the development on the SPA is necessary although I afford it limited weight in favour of the proposal as this would mitigate the impact arising from the new housing.
40. However, because of the waste water issue, I have also concluded that the proposal would, alone or in combination with other developments, be likely to significantly and adversely impact on the integrity of the habitats sites. This would not comply with the requirements under the Habitats Regulations and the Framework, and is a matter of substantial weight. It is such that the policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development proposed. In these circumstances,

the presumption in favour of sustainable development as set out in paragraph 11d of the Framework is not engaged.

41. Taking all these matters into account, even if, in particular because of the compliance with Policy DSP40 of the Local Plan, I was to conclude that the proposal accorded with the development plan taken as a whole, the weight and importance I attach to the harm that would likely result to the integrity of the habitats sites is such that this outweighs the benefits of the scheme and development plan compliance. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR