The Planning Inspectorate

Appeal Decision

Hearing Held on 25 June 2019

Site visit made on 25 June 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

Appeal Ref: APP/A1720/W/18/3207091
Land to the east of Furze Court, Wickham Road, Fareham PO16 7SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Prinset Limited against the decision of Fareham Borough Council.
- The application Ref P/17/0841/FP, dated 14 July 2017, was refused by notice dated 22 March 2018.
- The development proposed is the construction of 12 dwellings together with associated access, car parking, drainage and landscaping.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development was refused by the Council for a number of reasons. However, information relating to the ecological effects of the development has since been submitted. The Statement of Common Ground (SoCG) states that would overcome the reason for refusal relating to this matter. The SoCG states that details of a Sustainable Drainage Strategy (SuDS) could be required by condition. I see no reason to disagree with the conclusions of the SoCG in these regards. As a result, these matters do not need to be considered as main issues in the appeal.

3. A number of Unilateral Undertakings (UU) have been submitted following the hearing that seek to secure the provision of open space and to provide financial contributions toward the Solent Disturbance Mitigation Project, provision of open space and affordable housing. These provide varying contributions toward affordable housing based on viability considerations. I note that these have not been executed. I will return to these in my reasoning.

4. I consulted Natural England during the course of the appeal in relation to the effect of the proposed development on the Solent Coastal Special Protection Areas (SPAs). Their response raised a number of queries. I have given the appellant and Council the opportunity to comment on these. Their responses included a Supplementary SoCG and an executed UU has been submitted relating to the removal of land from agricultural production that seeks to mitigate the effect of nitrogen deposition within the Solent Coastal Special Protection Areas (SPAs). I have taken the Natural England comments and the responses into account and will return to this in my reasoning.

5. The revised National Planning Policy Framework (the Framework) was published during the course of the appeal. The Council and appellant had the opportunity to comment and I have taken its contents into account in coming to my decision.

6. A Local Plan Review has been published for consultation. However, I understand that is currently being revised following publication of the Framework. Consequently, it can carry little weight.

Main Issues

7. The main issues are:

   - The effect of the development on Solent Coastal Special Protection Areas;
   - The effect of the proposed development on the supply of open space in the area;
   - Whether or not the proposed development would make adequate provision for affordable housing; and
   - The effect of the proposed dwellings on the character and appearance of the countryside.

8. However, I first need to consider the approach to the decision in light of the planning policy context of the proposed development.

Reasons

Approach to decision making

9. Section 38(6) of the Planning and Compulsory Purchase Act states that my decision must be made in accordance with the development plan, including the Fareham Local Development Framework Core Strategy (CS) and Local Plan Part 2: Development Sites and Policies (LP2), unless material considerations indicate otherwise. The Framework sets out national planning policy and is a material consideration of great weight.

10. The Framework states that where there is not a five year supply of deliverable housing sites, such as within Fareham Borough, the presumption in favour of sustainable development would apply. This states that the policies which are most important for determining the application would be out-of-date. As a result, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

11. Paragraph 177 of the Framework states that the presumption in favour of sustainable development does not apply where there is a significant effect on a habitats site, such as the SPAs, unless an appropriate assessment were to conclude that the proposed development would not adversely affect the integrity of the habitats site.

12. Policy DSP40 of the LP2 sets out how development of additional housing sites outside the urban area boundary would be assessed where the Council are unable to demonstrate a five year supply of housing. It sets out a number of tests against which development would be assessed, including that proposals should be sensitively designed to minimise any adverse impact on the

countryside and that they should not have any unacceptable environmental or amenity implications. Other policies have been drawn to my attention in the CS and LP2, but this is the principle policy against which development should be assessed given the lack of a five year supply of deliverable housing sites.

Special Protection Areas

13. The Solent Coastal SPAs comprise a network of sites protected under the Birds Directive (79/409/EEC) including the Solent Maritime Special Area of Conservation (SAC), Portsmouth Harbour SPA and Ramsar site, Solent and Dorset Coast potential SPA and Solent and Isle of Wight Lagoons SAC. These provide a variety of qualifying features and habitats, including sandbanks, mudflats, coastal lagoons and estuaries. Populations of a number of species comprising qualifying features include invertebrates such as Desmoulin's whorl snail and various waterfowl including geese, ducks and waders, for example a substantial proportion of the world's population of dark-bellied Brent Geese.

14. As the proposal would not be directly connected with or necessary to the management of the protected sites, it would, either alone or in combination with other projects, be likely to have a significant effect on those areas. It is necessary to consider any effects on a precautionary basis. As a result, an appropriate assessment (AA) would be required to determine the extent of those effects, whether they could be avoided or whether mitigation measures could remove or reduce the effects. As I am the competent authority in relation to the appeal, it is necessary for me to complete an AA in coming to my decision.

Appropriate Assessment

15. The conservation objectives for the SAC and SPAs seek to ensure the integrity of the sites are maintained or restored, including natural habitats and habitats of qualifying features, and that they contribute to achieving the aims of the Birds Directive. The appeal site is located within 5.6km of some of the Solent sites and there is a threat to the integrity of the sites from public access and recreational disturbance.

16. The UUs would secure a contribution toward the Solent Disturbance Mitigation Project that seeks to provide mitigation to this disturbance. Natural England have stated that this adequately mitigates the effects of the development of potential recreational impacts on the designated sites. I see no reason to disagree with their conclusion in this regard. However, as the UUs have not been executed, I cannot take them into account.

17. In addition, the Integrated Water Management Study for South Hampshire published by the Partnership for Urban South Hampshire (PUSH) has identified uncertainty in some locations as to the capacity for new housing growth and the potential for adverse effects upon a number of coastal SPAs as a result of nitrogen discharge from wastewater.

18. The appellant has sought to provide mitigation for the effect of nitrogen discharge from wastewater by offsetting in the form of removal of an area of agricultural land from production. Natural England have suggested that this could be an effective strategy but have requested further clarification on future management of the offsetting land to ensure the delivery of this measure in perpetuity.

19. The UU submitted, signed by the owner of agricultural land to be taken out of production, seeks to address this issue. However, it is not clear whether it would address the concerns of Natural England. Given that situation, I conclude on a precautionary basis it is likely that the development would have a significant effect on the SAC and SPAs.

20. A condition has been agreed between the parties in the supplementary SoCG to require a scheme to provide mitigation for the nitrogen discharge prior to occupation of development should the appeal be allowed. This would enable the construction of the dwellings prior to agreement of the mitigation measures. Although the evidence suggests that mitigation can be agreed, if it were not then the condition may result in dwellings that cannot be occupied. I raised this concern in relation to the draft conditions suggested prior to submission of the supplementary SoCG, but this was not addressed by the appellant or the Council. I remain concerned that this would result in the dwellings being constructed, but not capable of occupation. As a result, a condition in this form would not be appropriate.

21. In addition, given the suggested method to overcome this matter includes a UU, such a scheme would be likely to include a legal agreement. Planning Practice Guidance (PPG) states that it is only possible to apply a condition requiring a legal agreement in exceptional circumstances in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk[1]. As the proposed development comprises only twelve dwellings, such circumstances do not apply in this case. This contributes to my concerns as to whether a condition would be likely to overcome the effect of the development on the SAC and SPAs.

22. Reference has also been made to the effect of air quality on the protected sites arising from road traffic emissions. However, I understand that the appeal site is some distance from the roads that result in this effect, such that there would not be a significant adverse effect on the integrity of the Solent Coastal SPAs from road traffic emissions.

23. Nevertheless, given my findings relating to the effects of nitrogen discharge from wastewater, public access and recreational disturbance, on a precautionary basis I conclude that it is likely that the development would have a significant effect on the SAC and SPAs.

Conclusion

24. Given the results of the AA, I conclude that recreational disturbance by occupants of the proposed twelve dwellings on the Solent Coastal SPAs and as a result of nitrogen discharge from wastewater, in combination with other development, would be likely to have a significant adverse effect on the integrity of the Solent Coastal SPAs. As such, the proposal would conflict with Policy CS4 of the CS, Policy DSP15 of the LP2 and the Framework. These policies seek to protect the Solent Coastal SPAs that are nature conservation sites of international importance, including requiring adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of the Solent Coastal SPAs.

[1] PPG reference ID: 21a-010-20190723

Open space

25. The appeal site is located between the housing development of The Meadows and the M27 motorway and adjacent to the flatted development at Furze Court. It is currently undeveloped and contains a mix of grassland and shrubbery with mature trees to the edges alongside the motorway, flats and houses. The Council suggest it should be considered as an area of natural greenspace, providing wildlife benefits and it has significant importance to local residents on that basis.

26. The appeal site forms part of a swathe of open land between The Meadows and the M27 motorway designated on the Local Plan Proposals Map and subject of Policy CS21 of the CS. That policy seeks to protect and provide open space. It seeks to safeguard and enhance open spaces to add to wildlife and recreational functions. However, development that would result in the loss of or reduce the recreational value of open space is resisted unless it is of poor quality, under-used or has low potential for open space and a better quality replacement site is provided equivalent in terms of both accessibility and size.

27. The proposal would result in development of the twelve houses plus access road and parking over much of the land. However, the remainder would be secured as open space. This would be subject of a UU that would provide for the retention and maintenance of that open space such that it would be available to the public, in accordance with Policy CS20 of the CS relating to infrastructure and development contributions. Nevertheless, this would result in a reduction in the size of open space such that it would result in a loss of designated open space that has particular wildlife functions.

28. The background paper to the draft Local Plan defines open space as all open spaces of public value, including natural greenspace that has natural characteristics and wildlife value, but are also open for public use and enjoyment. The definition in the Framework refers to all open space of public value which offer important opportunities for sport and recreation and can act as a visual amenity.

29. The appeal site is privately owned land. It was not included within the open space provided to support The Meadows, although adjacent to it. I understand that it formed open amenity land for the offices at Furze Court that have since been converted to flats. It was not included as open amenity land for residents of Furze Court either when it was first converted, nor when it was extended with additional flats.

30. A planning permission[2] for the construction of landscape earth bund to form amenity area that related to the appeal site and adjacent open space included a condition requiring that the application site be retained as open space. It is unclear whether that permission was implemented. In addition, no evidence has been presented to suggest that the owner agreed to provide the appeal site as open space.

31. The site has been used for the deposit of spoil, although I understand that was unauthorised and subject of enforcement action. I understand that the open space may be of below average quality and value and that there is a surplus of natural greenspace in this part of Fareham. I note that the appellant has been

[2] Fareham Borough Council reference 7459/46

advised to erect a fence between the appeal site and adjacent open space to stop access to the land. As they have not done so to date, I consider it unlikely they would. So I put limited weight on this prospect.

32. Designation of the land as open space in the Local Plan, even over the considerable period covered by a number of subsequent Local Plans, would not give rights to public access. Taking account of all the above, it is not possible to conclude with certainty that there is any public right of access to the appeal site.

33. Taking all of the above into account, although part of the site would be provided as more accessible open space, much of the site would be developed and the open space provided would be considerably smaller than that designated and protected by Policy CS21 of the CS. The importance of this area of open space is for its wildlife, rather than recreational, functions. As such, the proposed open space would not be a better quality replacement site in terms of size.

34. For these reasons, I conclude that the proposal would result in the loss of designated open space contrary to Policy CS21 of the CS. It would also conflict with Policy DSP40 of the LP2 insofar as it relates to the amenity implications of the proposed development in terms of the loss of an area of natural greenspace.

Affordable housing

35. Policy CS18 of the CS seeks the provision of affordable housing. For development of between 10 and 14 dwellings, it seeks provision of 30% affordable units of a mix of dwelling types. However, the policy allows consideration of viability where this might be an issue.

36. It is common ground that a financial contribution toward affordable housing would be required to meet the requirement of Policy CS18 of the CS. However, the appellant suggests that this, in addition to contributions toward mitigation measures in relation to the SPA, would affect the viability of the proposed development.

37. There were three main areas of disagreement between the parties, being the contingency allowance, costs of those mitigation measures and the land value of the site. The appellant suggests that there should be a contingency allowance of 5% whereas the Council considers that a smaller contingency would be more appropriate given a more detailed cost plan has been agreed. Based on the evidence presented, I consider the smaller contingency suggested by the Council would be appropriate.

38. Given that I have concluded that the mitigation measures put forward would not overcome the concerns that the development is likely to have a significant effect on the SPAs, the costs of these are uncertain at this stage. In addition, there is some uncertainty as to how they were calculated, although I understand the figures presented have been negotiated with the farmer, whose land would be taken out of production leading to a long term loss of income. Taking these factors into account, there is insufficient certainty to conclude the figures presented would be appropriate to take into account in considering the viability of the development.

39. The Council suggest that the land value should be calculated based on the existing use value of the site, plus a premium and taking account of abnormal costs, site specific infrastructure costs and professional site fees in accordance with the PPG[3]. The PPG was amended during the course of the appeal and discussed at the hearing. Reference was made to the value of paddock land, which I understand is higher than the value of the appeal site suggested. However, the land is designated as open space and the Council suggest that would affect the existing use value. A multiplier was applied by the Council to allow a premium for the landowner and the calculations take account of the costs and fees. As a result, I consider that the land value as calculated by the Council reflects the requirements of the PPG.

40. For these reasons and taking account of my conclusions in relation to the SPA matters, it is not possible to conclude as to whether or not the development would be viable with an affordable housing contribution. Although several draft legal agreements have been provided suggesting differing amounts of contributions toward affordable housing, no executed legal agreement has been provided. Consequently, I conclude that the proposed development would not make adequate provision for affordable housing in accordance with Policy CS18 of the CS.

Character and appearance

41. The appeal site comprises an open area, largely laid to grass with treed edges and areas of shrubs. It is adjacent to the residential development of The Meadows and flats at Furze Court and separated from other surrounding countryside, other than that designated as open space, by the motorway. Consequently, whilst located outside the settlement boundary of Fareham such that it is within the surrounding countryside, development of the site would reflect the character and appearance of adjacent development. As a result, the proposed development would not materially affect the character and appearance of the countryside.

42. For these reasons, I conclude that the proposal would not harm the character and appearance of the countryside. As such, the proposal would not conflict with Policy CS14 and CS17 of the CS that seek high quality design that protects the countryside from development that would adversely affect the character and appearance of the landscape. It would comply with Policy DSP40 of the LP2 insofar as it seeks to ensure development would be sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside.

Planning balance

43. The amount of the deficit in the five year supply of deliverable housing sites was discussed at the hearing. At that time, the Council suggested that they had a supply of 4.65 years. However, the appellant questioned whether delivery of the development at Welborne would proceed in accordance with the timescale suggested by the Council, suggesting that delivery would begin at least 6 months later than the Council anticipate. As a result, they suggest that the supply would be no more than 4.15 years.

[3] PPG Reference ID: 10-014-20190509

44. As I have concluded that the proposed development would be likely to have a significant adverse effect on the integrity of the SPAs, the presumption in favour of sustainable development does not apply in accordance with paragraph 177 of the Framework. Taking this and the fact that it is clear there is no five year supply of deliverable housing sites, I don't think that I need to conclude as to the amount of the deficit for the purposes of this decision. In addition, it is common ground between the parties that the proposal is relative in scale to the demonstrated five year housing land supply shortfall, such that the proposal would comply with the relevant criteria of Policy DSP40 of the LP2.

45. Nevertheless, the proposal would contribute 12 dwellings to the supply of homes in the area. As such, it would contribute toward reducing the deficit in the five year supply of deliverable housing sites. This would carry substantial weight but needs to be considered in light of the weight to be given to other considerations in the planning balance.

46. The proposed development would result in the loss of designated open space contrary to Policy CS21 of the CS and would conflict with Policy DSP40 of the LP2 in relation to the amenity implications of the proposed development arising from the loss of an area of natural greenspace. It would conflict with Policy DSP15 of the LP2 that seeks to protect the Solent Coastal SPAs and would not make adequate provision for affordable housing in accordance with Policy CS18 of the CS.

47. Taking all of this into account, I conclude that the provision of housing, even taking account of the deficit in the five year supply of deliverable housing sites, is not a material consideration of such weight in this case as to warrant a decision other than in accordance with the aforementioned development plan.

Conclusion

48. For the reasons set out above, I conclude that on balance and having had regard to all other matters raised the appeal should be dismissed.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Martin Hawthorne BSc (Hons) MRTPI	Director, WYG

FOR THE LOCAL PLANNING AUTHORITY:

Richard Wright BSc (FBC) MSc MRTPI	Principal Planner, Fareham Borough Council
Matthew Scott	Consultant, Aspinall Verdi
Stuart Cook	Director, Aspinall Verdi

INTERESTED PARTIES:

Cllr Katrina Trott	Councillor, Fareham East Ward, Fareham Borough Council
Mrs Brenda Clapperton	H. Sec., Fareham Society
Colin Hayward	Local resident
Ann Hindson	Local resident
G. Jeffrey	Local resident
Allan Simpson	Local resident
Judith Jones	Local resident
Alan Jones	Local resident

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1:	Letter from Bramsdon & Childs Solicitors dated 10 May 2019
Document 2:	Historic aerial photographs dated 1999, 2005, 2007 and 2016
Document 3:	Text of planning application reference 7459/46 transcribed from microfiche
Document 4:	Natural England advice on achieving nutrient neutrality for new development in the Solent region dated 2 June 2019
Document 5:	Fareham Local Plan 2036 Background Paper on Open Space