
Appeal Decision

Site visit made on 8 October 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2019

Appeal Ref: APP/B1740/W/19/3225641

Hill Rise, Hare Lane, Hordle, SO41 0GE

- 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 Harbourwood Homes Ltd. against the decision of New Forest District Council.
 - The application Ref: 18/11621 dated 23 November 2018, was refused by notice dated 27 February 2019.
 - The development proposed is the demolition of the existing building and construction of four homes with associated parking, access and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site lies close to and has the potential to affect the designated New Forest European Site and the Solent Coastal European Site, comprising the New Forest Special Area of Conservation (SAC) / Special Protection Area (SPA) / Ramsar site and the Southampton Water SPA / Ramsar site, Solent & Isle of Wight Lagoons SAC and the Solent Maritime SAC; the River Avon SAC / SPA / Ramsar site; and the Dorset Heathlands SAC / SPA / Ramsar site.
3. The Council has undertaken an Appropriate Assessment which concludes that the proposed development would, in combination with other developments, have an adverse effect on the integrity of European sites due to the recreational impacts associated with the development. The Council has suggested a negatively worded condition to achieve mitigation for these impacts. Based on the evidence before me, the result of this condition would be likely to lead the appellant to enter into a planning obligation or other agreement.
4. I have concerns with the use of such a condition as I explain later. I therefore consider that, although not a reason for the refusal of planning permission for the proposed development by the Council, the effect of the development on the European Sites should be a main issue. As the Council has raised the issue of this condition in its Statement of Case, the appellant and interested parties have had the opportunity to respond and so there is no possible prejudice arising from this matter being a main issue.

Main Issues

5. The main issues are therefore the effect of the proposed development on i) the character and appearance of the area and ii) the integrity of European Nature Conservation Sites.

Reasons

Background

6. A previous application for the demolition of the existing building and construction of 5 homes with associated parking, access and landscaping on the appeal site was refused planning permission by the Council by notice dated 21 December 2017¹. A subsequent appeal against that decision was dismissed on the basis of the effect of the proposed development on the character and appearance of the area².
7. The development before me differs from that previous scheme in that the number of proposed dwellings has been reduced to four, with consequent additional spacing between the bungalows to the rear of the site. The loss of one dwelling has also allowed the relocation of the garages to serve these dwellings to their rear, the creation of larger gardens for these properties and additional space for landscaping.

Character and appearance

8. The appeal site is a large plot currently occupied by a bungalow and a garage set back from Hare Lane with a hedge forming the boundary with the lane. The site is bounded to the rear and sides by the rear gardens of neighbouring properties, those to the north side and rear being at a higher level than the site.
9. From my observations during my site visit I concur with the previous Inspector's assessment that the pattern of development in the immediate vicinity of the site is strongly characterised by dwellings facing and set back from the road. As a consequence, Hare Lane has a spacious character to which the green space provided by front gardens makes a notable positive contribution.
10. The proposed dwellings on plots 1 and 2 would each face Hare Lane, whereas the proposed dwellings on plots 3 and 4 would be located to the rear of plots 1 and 2 and accessed by a driveway between. As with plots 3, 4 and 5 in the previous scheme, plots 3 and 4 would therefore not face the road and would instead be at some distance from the road frontage. Their siting would be clearly at odds with the established pattern of development in the area as described above.
11. The views of the dwellings on plots 3 and 4 from Hare Lane would be limited by the width of the driveway and the proposed close boarded fence along either side. However, the view would be still sufficient to demonstrate the uncharacteristic layout of development to the rear of dwellings fronting the road. As with the previous scheme, this incongruity would be further emphasised and revealed when entering into the site along the driveway. The revised scheme before me would therefore also fail to integrate with the

¹ 17/11356

² APP/B1740/W/17/3192184

- established pattern of development in the area and would be harmful to its prevailing character.
12. The reduction in the number of dwellings proposed allows a more spacious layout to the rear of the development than that previously proposed. The appellant has provided evidence that the plot sizes and building footprints of the development would be reasonably consistent with a number of other plots in the immediate vicinity. Nevertheless, plot 1 would be noticeably narrower than the majority of the other plots in the immediate area and the consequent proximity of the dwelling on this plot to its two side boundaries would result in a cramped appearance. This would be exacerbated by its smaller rear garden compared to the majority in the vicinity.
 13. Furthermore, a substantial proportion of the frontages of the two dwellings that would face Hare Lane, particularly that of plot 1, would be occupied by the parking and turning areas, which reduce the opportunities for planting. The lack of green areas to the frontages and alongside the access road would also be detrimental to the character and appearance of Hare Lane. Whilst there would be scope for some additional landscaping between the dwellings to the front and those to the rear, a significant proportion of this area would still be devoted to the access, parking spaces and garages.
 14. Paragraph 130 of the National Planning Policy Framework (the Framework) states that "Permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents". As with the previous Inspector, I have not been provided with any reason to believe that a plot of this size could not be developed with a layout that complemented and reinforced the character of the area and setting of the site.
 15. In addition, the Council has referred me to the Hordle Village Design Statement 2014 (HVDS), adopted by the Council as a Supplementary Planning Document. As noted by the previous Inspector, the guidance within the HVDS is somewhat generalised, but it does highlight a 'significant soft and green environment' as a characteristic of most of the built-up areas of the Parish and express the desire for new development to be 'soft edged' and to be front-on to streets. For the reasons set out above, the revised proposed development does not appear to reflect the local aspirations expressed in the HVDS. Accordingly, paragraph 130 of the Framework indicates that planning permission should be refused.
 16. The appellant has referred to four 'local' examples where larger plots have been redeveloped to create more homes. However, I have no information as to where these are in relation to the appeal site. Furthermore, from the evidence of the four aerial photographs of these other sites I am not persuaded that the context of these sites is sufficiently similar to that of the scheme before me for these to afford meaningful comparisons.
 17. The proposal for the site to the rear of 28-30 Lavender Road differs from that for before me in that the Lavender Road scheme comprised purely infill development, the design of which reflected that of a similar development at Lavender Gardens which abutted the Lavender Road site. There is therefore a clear distinction between the scheme before the Inspector that allowed the

appeal³ for Lavender Road and the proposal before me. This conclusion is consistent with that of the Inspector determining the previous appeal on the site before me. I therefore give the existence of this development, and the others to which the appellant refers, limited weight.

18. I accept that the Council's adopted policies do not preclude 'back land' development nor infill development as such. I also accept that the Council has not raised any concerns with the design or appearance of the proposed dwellings nor with the density of the development and that the scheme before me would be less harmful than that considered by the previous Inspector. Nevertheless, these matters would not address or overcome that the proposed development would cause an unacceptable degree of harm to the character and appearance of the area.
19. I therefore conclude that the proposed development would fail to comply with Policy CS2 of the Core Strategy, which amongst other things, seeks to secure development that is designed to respect the character, identity and context of the area's towns, villages and countryside, and contributes positively to local distinctiveness and sense of place. It would also be contrary to the Hordle Village Design Statement and paragraph 130 of the Framework.

The integrity of European Nature Conservation Sites

20. The Council has undertaken an Appropriate Assessment which concludes that the proposed development would, in combination with other developments, have an adverse effect due to the recreational impacts associated with the development on the integrity of European sites.
21. The Council considers that these adverse effects of recreational impacts would be avoided if the planning permission (in the event that the appeal was allowed) was to be conditional upon the approval of proposals for the mitigation of that impact in accordance with the New Forest District Council Mitigation Strategy for European Sites SPD or mitigation to at least an equal effect. The Council has suggested a negatively worded condition to achieve this.
22. Although this condition does not specifically require an applicant to enter into a S.106 Agreement, the Council acknowledges in Appendix 2a of its Statement of Case that such an Agreement is the most likely route for an applicant proposing only a small number of houses as the most practical way of meeting the terms of the condition.
23. However, the Planning Practice Guidance (paragraph 21a-010-20190723) (PPG) advises that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be acceptable in the majority of cases. Whilst such a condition may be appropriate where there is clear evidence that the delivery of the development would otherwise be at serious risk, eg in the case of particularly complex development schemes, I have no evidence that this is applicable to this proposal.
24. I acknowledge that other Inspectors have taken the view that such a condition is or would be appropriate in relation to other appeals in the New Forest District, including one to which the Council draws my attention⁴. However, the

³ APP/B1740/W/17/3167653

⁴ APP/B1740/W/17/3186659

Council has also drawn my attention to another appeal decision in which the Inspector considered such a condition to not be acceptable⁵. In my judgement such a condition would not accord with the PPG, for the reasons that I have set out above. I have no planning obligation or any other clear and lawful mechanism before me to secure appropriate mitigation measures.

25. I therefore conclude that the proposed development would conflict with Policies CS3 and CS25 of the New Forest District outside the National Park Core Strategy 2009 (the Core Strategy) and Policy DM3 of the New Forest District outside the National Park Local Plan Part 2 Sites and Development Management Development Plan Document 2014 (LPP2).

Other matters

26. It is common ground between the main parties that the Council cannot demonstrate a 5-year supply of deliverable housing sites, with the evidence being that the supply is only 2.6 years. The Housing Delivery Test: 2018 Measurement indicates that the Council delivered only 35% of its total housing requirement over the period 2015-2018. As a consequence, footnote 7 of paragraph 11 of the Framework is invoked such that the policies which are most important for determining the application cannot be considered to be up-to-date.
27. Accordingly, the presumption in favour of sustainable development as set out in paragraph 11 of the Framework requires planning permission to be granted unless either of two circumstances apply. The first of these circumstances is where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. These policies are set out in footnote 6 to paragraph 11 and include those relating to habitats sites.
28. Given my conclusions above on the matter of the effect of the proposed development on the integrity of habitats sites, paragraph 175 of the Framework provides a clear reason for refusing the development proposed in accordance with paragraph 11 d) i of the Framework and, with regard to paragraph 177 of the Framework, the presumption in favour of sustainable development does not apply in this case. Accordingly, I do not need to consider the development against paragraph 11 d) ii.
29. Nevertheless, I accept that the provision of an additional 3 dwellings would contribute to meeting the shortfall in the housing land supply. Although it would only be a modest contribution, the development would therefore accord with the Government's objective, as set out in the Framework, of significantly boosting the supply of housing. The provision of additional housing would also have a social benefit. The proposed development would have a potential economic benefit from the construction, albeit temporary, and from the contribution of future occupiers to the local economy.
30. The development would make effective use of land. However, paragraph 117 of the Framework makes it clear that this should not be at the expense of the environment. As I conclude above that the development would have an adverse impact on the character and appearance of the area, it would not

⁵ APP/B1740/W/18/3193526

achieve the environmental objective for the planning system set out in paragraph 8 of the Framework.

31. I acknowledge that the proposed development would not have an adverse effect on the living conditions of the occupiers of neighbouring properties or the future occupiers of the proposed dwellings. I also accept, on the evidence before me, that the development would not adversely affect highway safety and that it includes appropriate provision for car parking. However, as these matters would have only a neutral effect, I accord them neutral weight in my decision.
32. Interested parties have raised a number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

Planning Balance and Conclusion

33. The proposed development would conflict with a number of policies in the development plan. Despite the acknowledged shortfall in the supply of deliverable housing sites, the proposed development does not benefit from the presumption in favour of sustainable development due to the harm to the integrity of European designated nature conservation sites. Notwithstanding the social and economic benefits of the proposed development, the harm to the European sites and to the character and appearance of the area provide clear reasons for refusing the development.
34. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, neither the Framework nor any other material considerations indicate that a decision should be made other than in accordance with the policies of the adopted development plan.
35. For the reasons given above and having had regard to all the other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR