



Appeal Decision

Site visit made on 10 December 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal Ref: APP/C1760/W/19/3234815

Nattadon House, Chilworth Drove, Chilworth S016 7JH

- 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 Mr and Mrs McNamara against the decision of Test Valley Borough Council.
 - The application Ref 19/00780/FULLS, dated 22 March 2019, was refused by notice dated 21 May 2019.
 - The development proposed is the subdivision of an existing residential property to form 4 self-contained dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: whether the proposed development would be in an appropriate location; and the effect of the proposed development on designated nature conservation sites.

Reasons

Location

3. The appeal site is located within the countryside area of Chilworth Parish, as defined by the Test Valley Borough Revised Local Plan (2016) (TVBLP). The site contains a substantial detached dwelling. Situated in a relatively rural setting, the dwelling has good levels of privacy and is reasonably well separated from surrounding plots and buildings due to the size of the grounds, its position within the site and the presence of soft landscaping and trees. However, the surrounding area contains several buildings which are not far away. Accordingly, the site cannot reasonably be described as isolated¹.
4. Planning law requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. TVBLP Policy COM2 sets out that development outside the boundaries of settlements will only be permitted if it is appropriate in the countryside and it is essential for it to be located in the countryside.
5. The main parties agree that the proposed development does not comply with this policy. From the evidence before me, I agree. However, it has been put to me that there are material considerations that should be taken into account that could

¹ The Framework does not define the word 'isolated', but in *Braintree District Council v SSCLG & Ors* [2017] EWHC 2743 (Admin), the judge found 'isolated' should be given its ordinary objective meaning of 'far away from other places, buildings or people; remote'. That judgement was subsequently upheld at the Court of Appeal, *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610.

justify a departure from the development plan and override the conflict with TVBLP Policy COM2.

6. The National Planning Policy Framework (Framework) is a material consideration. Paragraph 79 sets out that the development of isolated homes in the countryside should be avoided unless one or more particular circumstances apply, including the subdivision of existing dwellings. The appeal proposal would subdivide the existing dwelling and the appeal site is within the countryside. However, the existing dwelling is not isolated and the wording in paragraph 79 of the Framework refers specifically to the development of isolated homes in the countryside. As such, and although the adopted local plan pre-dates the latest Framework, paragraph 79d is not applicable. The development is therefore not consistent with this part of the Framework, and it therefore neither supports the appeal proposal nor provides an allowance for such development in this location.
7. My attention has been drawn to a conversion of a dwelling to flats at Golden Hills, Belbins. That site is in the countryside and the conversion was approved by the Council despite it being contrary to the development plan and it not being isolated. However, as I do not have the full details of that scheme, I cannot determine whether the circumstances are analogous to the appeal proposal. Notwithstanding this, the evidence before me indicates that the development at Golden Hills was for ten flats and the property the subject of that conversion had never been occupied, whereas the appeal proposal would provide fewer flats and the dwelling the subject of this appeal has been occupied. Accordingly, it appears that each have different circumstances and are not particularly comparable. I have therefore determined the appeal proposal on its own merits and on the evidence before me.
8. Although consistency in decisions is important, whether the Council has previously taken a different approach to conversions in the countryside does not indicate that the appeal proposal is acceptable. The fact that the Council determined the planning application at Golden Hills under the Framework and after the meaning of the word isolated was clarified by the courts does not therefore lead me to a different conclusion. The need for planning reform is also not a matter before me.
9. The appeal proposal would make use of an existing building in the countryside and previously developed land. Subdividing a dwelling, the development would provide additional rural housing, reflecting local needs and with reasonable access to local services, facilities and employment. Although I have little substantive evidence that the flats would be provided as affordable housing and would enhance or maintain the vitality of the community, the development would contribute to housing supply in the area, which is in demand, and the units could be built-out relatively quickly. Although it cannot be described as involving outstanding or innovative design given it would involve internal alterations only, the development would also not harm the character and appearance of the surrounding area.
10. Be that as it may, the contribution to housing supply and the local economy would be relatively limited given the scale of the development, and the evidence before me indicates that the Council has a sufficient housing land supply irrespective of this windfall site. I also have little substantive evidence that the existing dwelling is underused. Accordingly, although the development would be consistent with various provisions in the Framework and would add to the supply of housing, I find that neither the benefits nor the material considerations put to me override the conflict with TVBLP Policy COM2 nor provide justification for development that, due to its location, conflicts with the development plan.

Nature conservation

11. TVBLP Policy E5 sets out, amongst other aspects, that development that is likely to result in a significant effect on an international or European nature conservation designation will need to satisfy the requirements of the Conservation of Species and Habitats Regulations.
12. The site is located within the buffer zones of the New Forest Special Protection Area (SPA) and the Solent and Southampton Water SPA. Development for residential accommodation within this area has the potential to increase recreational pressure on the SPAs, resulting in disturbance to the designated sites and their species and which could affect their status and distribution. In combination with other plans and projects for new residential development in the area, the appeal proposal would therefore be likely to have a significant effect on the designated sites.
13. The Council's Officer Report sets out that, in-line with the Council's adopted 'New Forest SPA Mitigation - Interim Framework' and the 'Solent Recreation Mitigation Strategy', a funding contribution for every new dwelling is sought to mitigate the increased recreation pressure resulting from the development. The appellants submitted a Unilateral Undertaking with the appeal to secure the required financial contribution to mitigate the recreational disturbance effects of the development.
14. After the Council's refusal of the planning application and following advice from Natural England, the Council has also been addressing the effects of new overnight accommodation on the water quality of the Solent and Southampton Water designated nature conservation sites. The advice from Natural England indicates that high levels of nitrogen and phosphorus input to the water environment in the Solent is causing eutrophication. All types of development that would result in a net increase in population served by a wastewater system would create additional levels of nitrogen and phosphorus. On this basis, the development is also likely to have a significant effect on the above designated sites due to its contribution, in combination with other plans and projects, to increasing eutrophication at the sites.
15. However, I am dismissing the appeal for other reasons. Accordingly, I am not pursuing the recreational disturbance and eutrophication matters further, including through Appropriate Assessment, because they could not lead me to a different decision.

Other matters

16. Reference has been made to the presumption in favour of sustainable development under paragraph 11 of the Framework. However, it has not been put to me that the development plan policies which are most important for determining the application are out-of-date and the evidence before me indicates that the Council has a sufficient housing land supply. I have therefore not applied the tilted balance approach set out in paragraph 11d) of the Framework and have determined the proposal in accordance with the development plan and material considerations.

Conclusion

17. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR