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## Appeal Decision

Site visit made on 28 January 2020

**by Helen O'Connor LLB MA MRTPI**

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

**Decision date: 29 January 2020**

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**Appeal Ref: APP/P2114/W/19/3238350**

**The Land, School Lane, Newport, Isle of Wight PO30 2HS**

- 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 Mark Deacon against the decision of Isle of Wight Council.
  - The application Ref 19/00091/OUT, dated 10 April 2019, was refused by notice dated 8 July 2019.
  - The development proposed is described as 'the demolition of dwelling and outline for 5 dwellings and access road'.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. In my heading above I have used the description of development given on the appeal form rather than that on the original application form, as this appears to reflect accepted changes to the description suggested by the Council<sup>1</sup>.
3. The application is made in outline with access to be determined at this stage but with appearance, landscaping, layout and scale reserved for separate consideration. As such, the layout plans submitted are illustrative save for the location of the access. Whilst I have taken into account that there may be alternative ways of developing the site, I have primarily considered the illustrative plans on the basis of what the likely impacts of the erection of the number of dwellings proposed would be. Nevertheless, in relation to some matters the appellant has referred to the illustrative layout in some detail. Accordingly, I have specified in my decision those areas where I have given the illustrative layout particular consideration.

### Main Issues

4. The main issues are the effect of the appeal proposal on:
  - The character and appearance of the area having particular regard to trees, and;
  - The living conditions of the occupants of Springburn with particular regard to privacy and outlook, and;
  - The living conditions of the future occupants of the proposal with particular regard to light within gardens.

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<sup>1</sup> Email dated 17 April 2019

## Reasons

### *Character and appearance*

5. The appeal site is located behind development fronting onto School Lane and between properties along Staplers Road to the north and Highfield Road to the south. The prevailing use is residential, and dwellings are generally arranged in short terraces or semi-detached houses, but there are some detached houses. The largely regular plots follow broadly linear building lines resulting in a well-ordered layout and appearance. There is a discernible distinction in character between the more public principal elevations of buildings in contrast to the spacious verdant gardens and woodland to the rear. The latter separates the surrounding linear built form and provides for glimpses of greenery between the buildings resulting overall, in a pleasant, sub-urban character to the area.
6. The appeal site currently accommodates a two-storey detached dwelling set in generous grounds. It is located, together with the adjacent bungalow known as Springburn, to the rear of St Paul's Christian centre. As such, it diverges to a degree from the prevailing layout due to its secondary position behind built form. Nevertheless, it is not set back a significant distance from the road and its orientation and linear alignment with the adjacent bungalow are otherwise broadly consistent with the surrounding pattern of development. Moreover, its generous garden area which lies adjacent to woodland and other residential gardens, such that they are read together, makes a positive contribution towards the spacious verdant character separating the surrounding built form.
7. The proposal would remove the existing house and introduce five dwellings. The position of the access combined with the shape of the site would limit the ways that the proposed number of dwellings could be accommodated. As such, the illustrative layout presents a realistic indication of how this would be done. This shows three of the dwellings would be sited deeper west into the site than the existing dwelling, adjacent bungalow and garaging to the north at Staplers Court. In addition, there would be an associated area of hardstanding for the access road. Consequently, this would harmfully erode the spacious verdant character and appearance of the land due to the encroachment of development into an area where, aside from modest domestic outbuildings, there is presently a general absence of built form.
8. In addition, as the dwellings would not have a road frontage, their orientation would be unlikely to respect the otherwise well-ordered arrangement of buildings in the surrounding area. The illustrative layout shows, that unlike the present dwelling, all of the dwellings would have their principal elevations facing away from School Lane and perpendicular to that of Springburn. This would adversely dilute the distinction between public principal elevations and private rear garden areas, evident in the surrounding established pattern of development. Taking these factors together, the result would be harmful to the character and appearance of the area.
9. Two of the trees<sup>2</sup> listed in the tree schedule of the submitted tree report that lie within the site have since been removed, therefore the concerns raised by the Council relate to trees that lie outside of the site. The site lies adjacent to a woodland area covered by an Area Tree Preservation Order reference TPO/2008/17. The parties agree that this does not include the appeal site, and

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<sup>2</sup> Scots Pine and Monterey Cypress, paragraphs 5.2.2 & 5.2.4 Appellant's Statement

based on the evidence presented, neither does it appear to cover the oak tree<sup>3</sup> to the north of the site. The size, visibility and remaining life span of the oak tree means that it makes a positive contribution to the character and appearance of the wider area.

10. I observed that part of the crown of the oak tree over hangs the north western corner of the appeal site. This area is shown as the rear garden for a dwelling on the illustrative plan. Due to the shape of the site, this plot is likely to be modest in size thereby limiting the garden space available to the future occupants. In these circumstances, it is foreseeable that there would be pressure from future residents to reduce the crown and branches to prevent overhang in order to improve the functionality and levels of light to the available garden space.
11. It is not shown that there would be anything to prevent future residents from undertaking such works. This would impact on the shape of the tree, adversely compromising its visual quality, thereby detracting from its contribution to the wider character and appearance of the area. Overall, I am not assured that there would be no unacceptable harmful effects on the oak tree.
12. In support of the proposal the appellant indicates that the site is barely visible from nearby roads. However, glimpses of the site are possible in gaps between buildings along School Road and Highfield Road. Furthermore, the site would be seen in private views from a number of surrounding properties.
13. Reference is made to a recent housing development for 20 dwellings on the opposite side of School Lane. This development is of a considerably larger scale than the appeal proposal and created a new road known as McKeown Close. As such, the principal elevations of the dwellings generally front onto the public domain which accords with the established pattern of development. Moreover, based on the evidence submitted, it is not shown that, prior to development the site provided spacious verdant separation between existing buildings. Due to these notable differences, the scheme is not directly comparable with the appeal proposal and therefore, is of limited weight. In any event, I have determined the appeal proposal on its own merits.
14. My attention is drawn to paragraph 117 of the National Planning Policy Framework (the Framework) which supports the effective use of land in meeting the need for homes. Nevertheless, it is not part of the appellant's case that the appeal site would fall within the definition of previously developed land in the Framework. Moreover, whilst paragraph 122 of the Framework also supports development that makes efficient use of land it states that account must be taken of the desirability of maintaining an area's prevailing character and setting, which includes residential gardens.
15. I accept that the site is not in a conservation area or other designated landscape area or buffer zone. Even so, it does not follow that the area does not have a distinctive character, nor that it is unworthy of protection. Policy DM2 of the Island Plan, Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document, March 2012 (IP) supports proposals for high quality design that protects, conserves and enhances the existing environment. The expectation that new development

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<sup>3</sup> T3 Tree Survey prepared by M Jones, June 2018 & TPO map reference TPO/2008/17

should complement the character of the surrounding area is not restricted to conservation areas or other designated areas.

16. The appellant points out that the Council have not produced supplementary design guidance or formal design codes to guide proposals in the area. Be that as it may, this does not justify development that would be harmful to the character of an area. Furthermore, the supporting text to policy DM2 states that prior to such guidance being prepared, proposals will be expected to adhere to the general design principles of the plan.
17. I further accept that landscaping is a reserved matter, and that a layout may provide for the retention of hedgerows as well as a planting scheme. Nevertheless, this would not fully address the concerns I have identified.
18. Accordingly, I find that the illustrative layout fails to provide evidence that an acceptable scheme is capable of being advanced at the reserved matters stage without resulting in unacceptable harm to the character and appearance of the area, including the consideration of trees. Therefore, it would conflict with policy DM2 of the IP that supports proposals for high quality design that, amongst other things, expects new development to complement the character of the surrounding area and have regard to existing constraints, including trees. In addition, as I am not assured that there would be no unacceptable harmful effects on the oak tree, the proposal would conflict with policies SP5 and DM12 of the IP which, amongst other matters, seek to protect, conserve and/or enhance the Island's natural environment and landscape.

#### *Living conditions of the occupants of Springburn*

19. The appeal site wraps around Springburn on three sides. The illustrative layout indicates that a dwelling is likely to be located close to the rear garden boundary. Even if this were single storey, it would still be likely to present a roof form that would extend across at least half of the length of the boundary thereby significantly diminishing the outlook for the residents of Springburn within the dwelling and when using their garden.
20. Furthermore, there would be dwellings located to the south which, although further away, are likely to directly face towards the rear and front garden areas of the property. Even if detailed measures in relation to screening and window placement were taken to limit overlooking to the rear garden, the presence and proximity of this amount of development and its associated activity and access lane, would result in the occupants of Springburn being hemmed in by surrounding development. The cumulative impact would have an unreasonable enclosing effect on the residents of the property.
21. Paragraph 127 f) of the Framework indicates that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. For the reasons outlined, the proposal would fall short of achieving this.
22. Accordingly, I find that although it is likely that steps could be taken as part of a detailed scheme that would adequately safeguard privacy, the proposal would nevertheless result in unacceptable living conditions for the occupants of Springburn due to poor outlook and would therefore, fail to achieve a high quality design required by policy DM2 of the IP.

#### *Living conditions of future residents*

23. The illustrative layout shows a dwelling within the north-western corner of the site to the rear of Springburn. Notwithstanding that there may be alternative layouts possible, given the number of dwellings proposed, coupled with the shape of the site it is likely that a dwelling would need to be accommodated similar to that shown on the illustrative plan.
24. The rear garden for this plot is of a modest size and shown as north facing which would restrict the levels of light and direct sunlight to the garden. The position of the dwelling itself, combined with the height of established trees to the west and north, would further curtail levels of light to the rear garden. This would result in large parts of the garden being cast in shade during afternoons and evenings for significant parts of the year. This is likely to be to such a degree that it would affect the range of planting that might be successful within the garden. Furthermore, the limited size of the plot would provide few other opportunities for sitting out and the degree of shading would be likely to unacceptably compromise the enjoyment of the garden, and therefore, the living conditions of future residents.
25. Accordingly, I find that due to the reduced levels of light to some of the proposed garden space, the illustrative layout fails to provide evidence that the development would provide a high standard of amenity for future occupiers in line with paragraph 127 f) of the Framework. Therefore, the proposal would be contrary to policy DM2 of the IP, which amongst other matters, seeks to support new development that is of high quality.

#### *Other Matters*

26. The appeal site is located within the 5.6km zone of influence for the Solent and Southampton Water Special Protection Area (SPA), a habitat recognised under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) as being of international importance for supporting important numbers of overwintering and breeding bird species.
27. Given the proximity to the SPA, it is reasonable to suppose that future residents of the proposal would potentially visit the Site for recreational purposes. Intensification of such activities would be likely to cause disturbance to the birds and their habitat. There is little to suggest that such visits, in combination with other residential development within the district, would not have a significant effect on the internationally important interest features of the SPA. Neither party has disputed this point.
28. The appellant has submitted a signed Unilateral Undertaking to provide contributions towards the provision of area wide mitigation in line with policies SP5 and DM12 of the IP and the guidance in the Solent Recreation Mitigation Strategy, Supplementary Planning Document, December 2017. On the evidence before me, it appears that the need for the contribution sought by the Council arises from the development and satisfies the 3 tests in Regulation 122(2) of the CIL Regulations 2010 (as amended).
29. Prior to any consent, proposals would require a successful Appropriate Assessment to be undertaken in line with the Habitat Regulations. However, as I am dismissing for other reasons it is not necessary for me to consider this matter further.

30. Policy DM4 of the IP requires new residential development of 1-14 units in Key Regeneration Areas and 1-9 units in Smaller Regeneration Areas and rural areas to provide financial contributions towards the provision of affordable housing. There is no dispute between the parties that a contribution should be made in accordance with the guidance in the Island Plan, Affordable Housing Contributions, Supplementary Planning Document, March 2017 (SPD). The appellant has provided a Unilateral Undertaking that sets out a formula for a financial contribution to be made which accords with the SPD and to which the Council does not object.
31. Nevertheless, both the IP and SPD predate the Framework dated February 2019, which stipulates at paragraph 63 that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. Therefore, based on the limited information before me on this matter, I am not sufficiently assured that such an obligation would meet the requisite statutory tests reiterated in paragraph 56 of the Framework which states that they are necessary to make the development acceptable in planning terms. However, I have not returned to the main parties for further clarification on this matter, as I am dismissing for other substantive reasons and therefore, it would not affect the outcome of my decision.

### **Planning Balance and Conclusion**

32. The main benefit of the proposal would be the provision of four additional dwellings in an accessible location towards the overall housing supply that would make more efficient use of the land and would enhance the mix of housing on offer. Furthermore, some economic benefits would arise from their construction and the economic activity associated with future occupants. However, considering the modest scale of the proposal, such benefits would be limited. Balanced against that, is the harm to the character and appearance of the area and the living conditions of existing and future occupants which attract significant weight.
33. The appellant refers to the absence of harm in relation to bio-diversity at the site, the proposed access and that appropriate levels of parking would be provided. However, the absence of harm in relation to these matters are neutral factors in the overall balance, as they would be required, in any event, by other development plan policies.
34. Planning law requires decisions to be made in accordance with the development plan, unless material considerations indicate otherwise<sup>4</sup>. In this case, I conclude that the proposal would be contrary to the policies of the development plan that seek to achieve a high quality design for new development. The benefits of the proposal do not attract sufficient weight to indicate that the decision should be taken other than in accordance with the development plan.
35. Moreover, even if there had been a positive Appropriate Assessment undertaken to demonstrate that no harm resulted to an international designated site of importance for bio-diversity, and that suitable provision for affordable housing was either provided, or not required to make the

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<sup>4</sup> Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70 (2) of the Town and Country Planning Act 1990.

development acceptable in planning terms, this would not have affected the outcome of this balance.

36. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

*Helen O'Connor*

Inspector