



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: 27 February 2020

Appeal Ref: APP/P2114/W/19/3237263

Cherry Tree Cottage, Sandy Lane, Newport, Isle of Wight PO30 3BS

- 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 Steve Knight against the decision of Isle of Wight Council.
 - The application Ref P/00312/19, dated 21 March 2019, was refused by notice dated 1 July 2019.
 - The development proposed is the demolition of a garage, proposed detached dwelling with balcony, detached garage and vehicular access.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of a garage, proposed detached dwelling with balcony, detached garage and vehicular access at Cherry Tree Cottage, Sandy Lane, Newport, Isle of Wight PO30 3BS in accordance with the terms of the application, Ref P/00312/19, dated 21 March 2019, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are:
 - Whether the site is suitably located for new housing development, having regard to local and national planning policies and accessibility, and;
 - The effect of the proposal on the character and appearance of the area, and;
 - The effect of the proposal on the Solent and Southampton Water Special Protection Area.

Reasons

Location of development

3. Policy SP1 of the Island Plan, Isle of Wight Council Core Strategy (including Minerals and Waste) and Development Management Policies Development Plan Document, March 2012 (IP), in setting out a spatial strategy, supports development proposals on appropriate land within or immediately adjacent the defined settlement boundaries of the Key Regeneration Areas, Smaller Regeneration Areas and Rural Service Centres. The explanatory text for the policy indicates that the spatial strategy has been devised, in part, to ensure that development is focussed in the most sustainable locations.

4. Policy SP1 further stipulates that unless a specific local need is identified, development proposals outside of, or not immediately adjacent to the settlements specified in the IP will not be supported. There is no dispute between the parties that the appeal site lies within the wider rural area for the purposes of the IP.
5. The supporting text¹ further explains that local need includes identified local requirements for housing, a demonstrable contribution to maintaining local facilities (such as schools, shops and community facilities) and to maintain or enhance the wider viability of local communities but does not further define the meaning of 'local' within this context. Based on this, the reference to 'specific local need' implies a need that is connected spatially to a contained area but is nevertheless, wider and more consistent in nature than specific individual requirements. Therefore, whilst I acknowledge that an additional dwelling would be beneficial to the appellant and the personal circumstances of his wider family, in my view they fall short of establishing a specific local need as required by policy SP1. Moreover, there is little other substantive evidence provided to demonstrate a specific local need.
6. The proposal is for a three bedroom house close to the small settlement of Blackwater, which in view of the limited facilities provided, would be likely to have future occupants with a range of travel requirements in order to access facilities, services and employment further afield. Policy SP7 of the IP seeks to support proposals that increase travel choice, provide alternative means of travel to the car and help reduce the impact on air quality and climate change.
7. The site is within reasonable walking distance of bus stops to the north and south which both benefit from a regular service to Newport as well as other towns. However, notwithstanding the presence of the shared footway/cycle way accessible from Sandy Lane, the pedestrian route to the northern bus stop has no formal pavement. It would involve walking along an unmade pavement or verge directly adjacent to busy, noisy roads for considerable sections, is generally unlit and there is no bus shelter.
8. The walking route to the southern bus stop for services towards Newport is also unlit, and, would, due to the limited pavement facilities, require pedestrians to cross the A3020 twice. Moreover, if pedestrians were to use the shared footway/cycle route in order to avoid part of Sandy Lane, which is narrow with no pavement and has a junction with the A3020, this would increase the overall distance. Taking these factors together, the walking environment to the nearest bus facilities would not be particularly attractive for pedestrians and is likely to deter them from using them routinely.
9. I accept that the proximity of the cycle route, which forms part of the national cycle route 23, would offer a safe, segregated cycle route into Newport which is approximately 2km from the appeal site. However, it is unlit which may deter some cyclists. Moreover, the distance involved would be likely to discourage regular pedestrian use. The parties agree that vehicular trips would be the dominant mode of travel² and for the reasons outlined, I find no basis to disagree with this conclusion.

¹ Paragraph 5.31 of the IP

² Paragraph 5.25 Appellant's Statement

10. My attention is drawn to an appeal decision³ in which the Inspector acknowledged that the scheme before him had the potential to provide alternative means of travel other than the car. My findings in relation to this site do not find otherwise in this regard. However, significantly, in that case the main parties accepted that a specific local need had been demonstrated. Accordingly, it is of limited weight in my consideration of policy SP1 overall.
11. Furthermore, I have had regard to other recent appeal decisions⁴ for residential development outside of a settlement boundary where in considering the application of policy SP1 of the IP, the Inspectors found that a specific local need had not been shown. In those instances, each Inspector found in relation to this issue that the proposal would conflict with policy SP1, which reinforces my approach in this case.
12. I am further referred to a dwelling permitted by the Council at Blackwater Hill Farm⁵ which was described in the associated officer report as having a 'reasonably sustainable location'. However, I note that the site was considerably closer to the bus stops south of the appeal site than the scheme before me, and therefore it is not directly comparable with the appeal site in this regard and is of limited weight. In any event, I have considered the appeal proposal on its own merits.
13. Therefore, overall, although the access to bus services and cycle paths would offer a limited degree of choice for journeys other than by car, the appeal site is not within the most sustainable locations identified in the spatial strategy in policy SP1, and a specific local need to justify the location of the development is not demonstrated. Accordingly, I conclude that the proposal would be inconsistent with policy SP1 of the IP relating to the location of new housing development.
14. However, in recognition of the limited degree of choice provided for alternative means of travel, I do not consider that the proposal would conflict with the wording of policy SP7 of the IP, and note that, notwithstanding the comments in the delegated officer report, the Council have not referred to it in refusal reason 1 on the decision notice.

Character and appearance

15. The appeal site forms part of the residential grounds to Cherry Tree Cottage that lies within a cluster of residential development on Sandy Lane and Sandy Close. This enclave of development is otherwise generally surrounded by fields and hedgerows, which when combined with the narrowness of Sandy Lane results in a pleasant rural character.
16. The site currently accommodates a detached garage, parking area, domestic planting and paraphernalia associated with Cherry Tree Cottage. It is visually separate from the adjacent agricultural land and reads as part of the group of dwellings. It therefore, has a domestic rather than a rural character.
17. The proposal would introduce a detached dwelling that, although larger than the present garage would be contained within the existing residential grounds of Cherry Tree Cottage. As such it would not encroach onto the adjacent

³ Reference APP/P2114/W/18/3209772

⁴ Referenced APP/P2114/W/18/3214433, APP/P2114/W/18/3195997 & APP/P2114/W/19/3228085

⁵ Reference P/00578/15

agricultural land and the submitted computer generated images⁶ demonstrate that the development would be visually associated as part of the existing group of dwellings to the east and south. In this context, the relationship of the appeal site to the open countryside nearby would not be fundamentally changed.

18. This is reinforced by the comments of Arreton Parish Council who describe the development as natural infill within the curtilage of the site. Furthermore, the Council do not raise concerns in relation to the height, mass and roof design of the proposal which they consider would sit comfortably within the context of its surroundings⁷.
19. Accordingly, I find that the proposal would not cause harm to the character or appearance of the area and would complement the immediate built form. It follows that there would be no conflict with policy DM2 of the IP which generally supports proposals for high quality and inclusive design that would protect, conserve and enhance the existing environment whilst allowing change to take place.

Solent and Southampton Water Special Protection Area

20. The site lies 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 as being of international importance for supporting important numbers of overwintering and breeding bird species.
21. Recent caselaw⁸ requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an Appropriate Assessment rather than at screening stage.
22. In the absence of mitigation measures and using a precautionary approach, given the proximity to the SPA it is reasonable to suppose that future residents of the development would potentially visit the Site for recreational purposes and dog-walking. Intensification of such activities would be likely to cause disturbance to the birds and their habitat. Notwithstanding that the future number of residents generated by the appeal proposal would be relatively low, I am required to consider the effect of the proposal both individually and in combination with other projects. As such, there is a risk of a significant effect on the internationally important interest features of the SPA.
23. The Solent Recreation Mitigation Strategy, Supplementary Planning Document, December 2017 (SPD) sets out the Council's approach to mitigating the adverse effects of new housing development by using avoidance measures. This includes the provision of Suitable Alternative Natural Greenspace (SANG) and other initiatives including the provision of rangers, communication material as well as specific projects. Funding for the mitigation measures within the strategy is primarily secured as a planning obligation through developer contributions in line with specified proportionate rates.
24. The Council indicate that a financial contribution of £653 represents proportionate mitigation in line with the strategy and that this should be

⁶ Appendix 8, Appellant's statement

⁷ Council's Planning Officer Delegated Procedure Report – Impact on the character of the area

⁸ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

secured by a legal agreement⁹. The appellant has submitted a signed Unilateral Undertaking (UU) dated 5 January 2020 that would provide a financial contribution of £653 prior to the commencement of development towards the costs of providing mitigation measures required by the SPD and referred to in policy SP1 of the IP. I am satisfied that the obligation meets the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and reiterated in paragraph 56 of the National Planning Policy Framework (the Framework) as being necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

25. Furthermore, in response to consultation under Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017, Natural England have confirmed that the mitigation measures proposed in this case would be sufficient to avoid an adverse impact to the integrity of the SPA and would be appropriately secured, which given their specialist knowledge, attracts considerable weight.
26. On this basis, I find that the mitigation measures identified are sufficient to avoid the likely impact of the increased residential development proposed on the SPA, and that they can be appropriately secured. As a consequence, I am satisfied that the proposal would not result in a significant effect to the SPA. I therefore find no conflict with policy SP1 of the IP, which amongst other matters, requires relevant development to demonstrate how there will be no significant impact on the integrity of European designated sites.

Planning Balance

27. Reference is made to the Council's Five Year Land Supply Update 2018 and a recent appeal¹⁰ which indicated that the Council as of 1 April 2018 cannot demonstrate a five year land supply, and I have not seen evidence to show otherwise.
28. Paragraph 11 of the Framework states that in these circumstances relevant policies for the supply of housing should not be considered up-to-date and the presumption in favour of sustainable development means that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or (ii) that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (the tilted balance).
29. Having undertaken an appropriate assessment and found that the proposal would not have a significant effect on the integrity of the SPA, in line with paragraph 177 of the Framework, I do not find that there are policies in the Framework that protect areas or assets of particular importance that would provide a clear reason for refusing the development. As such the tilted balance applies in this case.
30. The main adverse impact of the proposal would be due to its conflict with the overall spatial strategy set out in policy SP1 of the IP. However, combining the modest scale of the proposal, which is unlikely to seriously undermine the

⁹ Council's appeal statement, Appendix C, Appropriate Assessment Statement

¹⁰ Reference APP/P2114/W/18/3193602

spatial strategy, with the degree of choice, albeit limited, as to the modes of transport available to future occupants of the dwelling to nearby facilities, overall the degree of resulting tangible adverse impact arising from the conflict with the development plan would be limited.

31. The principal benefit of the proposal would be the provision of an additional dwelling to the housing supply where there is unmet demand. It would also bring economic benefit as a result of the construction, and the social and economic benefits associated with the occupants of an additional dwelling supporting local services. Additionally, the development is likely to be a self-build dwelling¹¹ that would benefit the appellant and his family and would make more efficient use of previously developed land, as defined in the Framework. Paragraph 61 of the Framework includes some general support for people wishing to commission or build their own homes and paragraph 117 promotes the effective use of land in meeting the need for homes in a way that makes as much use as possible of previously developed land.
32. I therefore find that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the presumption in favour of the development applies in relation to the circumstances of this case.
33. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹². In this case, although the proposal conflicts with policy SP1 of the IP, the presumption in favour of the development constitutes a material consideration of significant weight that justifies a determination other than in accordance with the development plan.

Conditions

34. The three year period in which the planning permission may be implemented is a statutory requirement and I see little reason to reduce it to two years, notwithstanding the appellant's commitment to implementing the scheme. I also consider that it is necessary to specify the plans that are approved and that the development shall be undertaken in accordance with these, as this provides certainty.
35. Given the generic references to materials used in the application form a condition requiring the agreement of the finish of the external materials to be used is reasonable to safeguard the overall quality of the design. In addition, I also agree that a condition to agree and implement suitable landscaping arrangements would assist in integrating the development which would accord with the provisions of policy DM2 of the IP.
36. Taking into account the comments of the Highway Authority, conditions to secure the proposed parking and access visibility is considered reasonable given the narrow nature of Sandy Lane.
37. Paragraph 55 of the Framework stipulates that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to

¹¹ Paragraph 5.53 Appellant's statement of case

¹² Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. PPG¹³ advises that the rigorous application of these 6 tests can reduce the need for conditions and reiterates that it is good practice to keep the number of conditions to a minimum wherever possible. Based on the information before me and my own observations, the separation between the first floor east facing window and Cherry Tree Cottage, together with the intervening garage structure would make it unnecessary to also require the window to be obscure glazed by condition.

38. PPG further advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity and that the scope of such conditions needs to be precisely defined. The Council have suggested several conditions to remove and restrict permitted development rights normally afforded to householders. However, it is not fully explained why such blanket removal of freedoms to carry out small scale domestic alterations are reasonable or necessary in these circumstances in order to make the development acceptable in planning terms. Therefore, I do not consider that the suggested conditions would meet the requisite tests set out in paragraph 55 of the Framework.

Conclusion

39. For the reasons given above, I conclude that the appeal should be allowed.

Helen O'Connor

Inspector

¹³ Paragraph 018 ID:21a-018-20190723

Schedule of Conditions (7 conditions)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Plans and elevations as proposed 2018-50 P2 Rev C.
- 3) Prior to development above ground level the materials to be used in the external surfaces of the development hereby permitted shall be submitted to and agreed in writing with the local planning authority. Thereafter the development shall be constructed using the materials so agreed.
- 4) Prior to the first occupation of the dwelling hereby approved there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) The dwelling hereby approved shall not be occupied until space has been laid out within the site, and drained and surfaced in accordance with drawing no. 2018-50 P2 Rev C for 2 cars to be parked. The space shall thereafter be kept available at all times for cars to be parked.
- 7) No part of any boundary wall or fence erected on the site roadside frontage, nor any hedge planted to mark the roadside boundary or alongside such boundary, wall or fence, shall at any time be permitted to be more than 1 metre above the level of the adjacent carriageway and resultant visibility splays shall be kept free of obstruction.