
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/19/3237165

316 Fairlee Road, Newport, Isle of Wight PO30 2JU

- 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 Ms Barnett against the decision of Isle of Wight Council.
 - The application Ref P/00343/19, dated 26 March 2019, was refused by notice dated 23 May 2019.
 - The development proposed is a dwelling with parking.
-

Decision

1. The appeal is allowed, and planning permission is granted for a dwelling with parking at 316 Fairlee Road, Newport, Isle of Wight PO30 2JU in accordance with the terms of the application, Ref P/00343/19, dated 26 March 2019, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Ms Barnett against the Isle of Wight Council. This application is the subject of a separate Decision.

Main Issues

3. 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 living conditions of the occupants of 316 Fairlee Road, with particular regard to the impact on light within the garden, and;
 - The effect of the proposal on the Solent and Southampton Water Special Protection Area.

Reasons

Location of development

4. As part of the overall spatial strategy on the Isle of Wight, 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) permits housing on appropriate land within or immediately adjacent to the defined settlement boundaries of the Key Regeneration Areas, Smaller Regeneration Areas and Rural Service Centres. Although the appeal site is within the Medina Valley Key Regeneration Area, there is no dispute between the parties that it lies some distance to the north of the identified settlement boundary, and therefore for the purposes of the IP, is part of the wider rural area. In this area, unless a specific local need is identified, policy SP1 does not support residential development.

5. The supporting text for policy SP1¹ 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 specifically define the meaning of 'local' within this context.
6. I am referred to parts of the Housing Needs Assessment 2018 and the Medina Valley-East sub market area, as well as demographic information generally relating to Newport², as evidence of a need for three-bedroom housing. However, the limited information before me does not state the size of the sub market area which is likely to cover a considerable area. Therefore, whilst the information shows a general level of need within part of the Island, in my view it falls short of demonstrating a specific local need that relates to the appeal site location as stipulated in policy SP1.
7. The appeal site is within a short walk to a bus stop with a regular service into Newport where a good range of local services and facilities are located. There is also a reasonable pedestrian and cycle route into Newport but given the distance of over a mile, this is likely to deter some pedestrians from using the route routinely. Nevertheless, I accept that there would be a degree of choice as to how future occupants might travel, which may reduce their reliance on the private car. However, this does not address the policy requirement to identify specific local need.
8. My findings in relation to these matters is generally consistent with those of the Inspector in the Round House appeal decision which has been highlighted by both parties³. This decision concerned residential development outside of the settlement boundary at a site to the south west of the appeal site, and therefore, is relevant and carries considerable weight. The Council point out that the appeal site lies approximately 250 metres north of the Round House site and further away from Newport town centre. Nevertheless, the moderate increase in distance is unlikely to have a bearing on cyclists or bus-users and I have already acknowledged that the distance of the appeal site from Newport may deter some pedestrians.
9. My attention is also drawn to two previous decisions⁴ of the Council at 346 and 358 Fairlee Road whereby additional houses have been permitted. However, I note that these were determined prior to the Round House appeal decision and therefore, are of limited weight in relation to this main issue. Further reference is made to an appeal decision at Upton House⁵ to which I have had regard. This decision concerned the sub-division of an existing residential unit outside Ryde.

¹ Paragraph 5.31

² Section 6, Supporting Statement – Andrew White Planning Consultancy, April 2019

³ Reference APP/P2114/W/18/3195997

⁴ Referenced P/00703/16 & P/00789/17

⁵ Reference APP/P2114/W/19/3228085

Accordingly, the circumstances of the proposal and settlement concerned were different to the scheme before me, which limits the weight I can give to it. Nevertheless, I am mindful that the Inspector in that case found there was conflict with the development plan policies in relation to the acceptability of the location. In this regard, my approach is similar.

10. Accordingly, I conclude that the proposal would be inconsistent with policy SP1 of the IP relating to the location of new housing development.

Character and appearance

11. The section of Fairlee Road nearest to the appeal site, due to the presence of fields and hedgerows with generally sporadic development has, notwithstanding the large solar farm to the rear, a prevailing rural character. Nevertheless, further afield there are sections of linear residential development fronting onto Fairlee Road, within which most dwellings are detached or semi-detached with a regular set back. They do exhibit a variety of style and architectural detailing.
12. The appeal site is one of a pair of semi-detached houses that are set apart from other dwellings by intervening agricultural fields or woodland. No. 316 has a generous curtilage that includes garden land to the side. Although, largely devoid of built form, the land is visually distinct from the adjacent agricultural field due to the vehicular access, gravelled parking area and domestic planting and boundary treatments. These factors result in a domestic rather than a rural character. Accordingly, the site makes a limited contribution towards the prevailing rural character which is mostly derived from the boundary planting to the side and rear.
13. The proposal would introduce a detached dwelling that would be contained within the existing residential grounds of No.316. As such, it would not encroach onto the agricultural land to the side or rear. Moreover, its visual impact would be limited as it would be set back further into the site than Nos.316-318. In this context, views from the north would be partially screened by Nos 316-318 and the established roadside hedgerow planting would provide partial screening when viewed from the south. Additionally, boundary planting along the southern boundary would assist in softening the visual impact of the development and the transition to agricultural land.
14. Furthermore, the design of the proposal draws upon the scale, form and detailing seen in the pair of semi-detached dwellings at 316-318 Fairlee Road. The redbrick and tile would be consistent with materials at No.318, and by flanking No. 316 which is rendered, would provide some visual balance as a group.
15. The resulting development would have a similar visual impact to development permitted to the sides of 346 and 358 Fairlee Road which are both situated reasonably close to the north-west of the appeal site. Both of those cases proposed a single dwelling to the side of existing dwellings with grounds situated adjacent to agricultural land and as such, share sufficiently similar characteristics with the appeal proposal such that they attract moderate weight in favour of the development.
16. The Council point to the size of the physical and visual gap between the appeal site and development to the south along Fairlee Road being diminished which

they consider important in preventing urban sprawl. However, the appeal site already forms part of the residential grounds of 316 Fairlee Road rather than encroaching into agricultural land that comprises this gap. Moreover, a considerable distance⁶ would be retained between the additional built form of the appeal proposal and the nearest group of dwellings to the south, which are on the opposite side of Fairlee Road. In this context the additional mass wrought by the development would not have a perceptible impact on the physical and visual gap referred to by the Council.

17. 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.
18. The Council also refer to policies SP1 and SP2 in their refusal reason on the decision notice in relation to this issue. Policy SP1 sets out the overall spatial strategy but also stipulates that in all cases, development on non-previously developed land will need to clearly demonstrate how it will enhance the character and context of the local area. However, the reference to residential gardens in the definition of previously developed land within the National Planning Policy Framework (the Framework) only excludes land in built-up areas. On that basis, I have little before me to show that the appeal site constitutes non-previously developed land such that policy SP1 is applicable in these circumstances. Moreover, policy SP2 primarily sets out the distribution of housing figures and does not specifically refer to character and appearance. I therefore find no conflict with these policies.

Living conditions

19. The parties agree that there would be little impact on the side facing windows of 316 Fairlee Road⁷ but disagree in relation to the likely impact of the development on the light levels to the garden area.
20. The proposed dwelling would be located to the south west, and adjacent to some of the rear garden area, of No.316. This would result in some shading to parts of the rear garden in the afternoon and evenings for parts of the year. Nevertheless, No.316 would retain a generous sized rear garden, notable proportions of which would enjoy direct sunlight for most of the day. Drawing No 029-18.3 Rev 1.8 shows the current location of decking and hot tub area for No.316 would remain some distance from the new dwelling. As such, although there would be some shadowing as a result of the proposal, it would not amount to unacceptable harm to the living conditions of the occupants when using their garden overall and there is little substantive evidence provided to show otherwise.
21. Accordingly, based on the evidence presented, I find that the proposal would provide satisfactory living conditions for the occupants of 316 Fairlee Road with reference to the light levels in their garden. Therefore, I find no conflict with policy DM2 of the IP which generally supports proposals for high quality and inclusive design but does not specifically refer to living conditions.

⁶ Referred to as 470m in the Council's delegated report

⁷ Impact on neighbouring properties, Council delegated report

Solent and Southampton Water Special Protection Area

22. 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.
23. 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.
24. 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.
25. 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.
26. Funding for the mitigation measures within the strategy is primarily secured as a planning obligation through developer contributions, with the proportionate rates as of April 2019 set out in the document entitled Solent Special Protection Area Mitigation Payments. In relation to this proposal the Council consider that a financial contribution of £653 represents proportionate mitigation and that this should be secured by legal agreement⁹.
27. The appellant has submitted a signed Unilateral Undertaking (UU) dated 27 December 2019 that would provide a financial contribution of £653 prior to the commencement of the development towards the costs of providing mitigation measures required by the SPD and referred to in policies SP1 and SP5 of the IP. On that basis, I am satisfied that the obligation meets the 3 statutory tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 as being necessary, directly related to the development and fairly and reasonably related in scale and kind to the proposal.
28. 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.

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

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

29. On this basis, I find that the mitigation measures identified are sufficient to avoid the likely impact of the proposal 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 policies SP1 and SP5 of the IP, which amongst other matters, seek to protect the integrity of designated European Sites.

Planning Balance

30. Reference is made to the Council's Five Year Land Supply Update 2018 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.
31. Paragraph 11 of the Framework states that in these circumstances relevant policies for the supply of housing should not be considered up-to-date. Furthermore, 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).
32. Having undertaken an Appropriate Assessment and found that the proposal would not have a significant effect on the integrity of the SPA, 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 advice in paragraph 177 of the Framework¹⁰ does not prevent the tilted balance applying in these circumstances. In this regard the proposal before me differs from the circumstances of the Round House appeal decision, consequently, the balancing exercise I must undertake will differ.
33. 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, in view of the small scale of the proposal and the reasonable level of accessibility of the site to nearby facilities, there would be limited tangible harm as a result of this conflict. 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. Accordingly, I 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 this case.
34. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹¹. In this case, although the proposal conflicts with policy SP1 of the IP, the presumption in favour of the development constitutes a

¹⁰ Dated February 2019

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

material consideration of significant weight that justifies a determination other than in accordance with the development plan.

Conditions

35. The three year period in which the planning permission may be implemented is a statutory requirement but 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.
36. 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. It will be seen from my reasoning above, that planting along the southern boundary would assist in softening the visual impact of the development, on that basis, a condition to agree and implement a landscaping scheme is reasonable.
37. Finally, taking into account the comments of the Highway Authority, a condition to secure the proposed parking, turning and access arrangements is considered reasonable in the interests of highway safety.
38. Planning Practice Guidance 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 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

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: Proposed floor plans drawing no. 029-18.1 Rev 1.8; Proposed elevations drawing no. 029-18.2 Rev 1.8; Proposed site plan drawing no. 029-18.3 Rev 1.8 and Proposed Block and Location Plans drawing no. 029-18.4 Rev 1.8.
- 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 soft and hard 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. 029-18.3 Rev 1.8 for 3 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 7) The dwelling hereby approved shall not be occupied until the access arrangements shown on drawing no. 029-18.3 Rev 1.8 have been provided. This shall include the permanent closure of the existing vehicular access shown on drawing no. WLS.CD.7 and pedestrian visibility splays (2m x 2m) at the junction between the access of the proposal and the highway in accordance with details previously agreed in writing with the local planning authority. The access shall be retained thereafter. Nothing that may cause an obstruction to visibility shall at any time be placed or be permitted to remain within the visibility splay shown in the approved sight lines.