
Appeal Decision

Site visit made on 2 July 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2020

Appeal Ref: APP/P2114/W/19/3243709

Land adjacent to Oxleigh, Southdown Road, Freshwater, Isle of Wight PO40 9UA

- 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 Jeff Watson against the decision of Isle of Wight Council.
 - The application Ref P/01356/18, dated 5 December 2018, was refused by notice dated 3 July 2019.
 - The development proposed is a detached dwelling and formation of new vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for a detached dwelling and formation of new vehicular access at Land adjacent to Oxleigh, Southdown Road, Freshwater, Isle of Wight PO40 9UA in accordance with the terms of the application, Ref P/01356/18, dated 5 December 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. In my heading above I have used the description of development given on the appeal form rather than that given on the application form as it was agreed between the parties and appears on the decision notice.
3. Paragraph 5.4 of the Design and Access Statement describes a 20m separation between the proposed dwelling and Oxleigh. However, this is not reflected in drawing number 371/VW/17/1 Rev C which shows the location of the dwelling within the plot. Nevertheless, I have based my determination on the submitted scaled drawings which is consistent with the approach taken by the Council.

Main Issues

4. 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 Solent and Southampton Water Special Protection Area.

Reasons

Location of development

5. 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) sets out the spatial strategy for development across the Island, including residential development. This 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.
6. 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. The settlement of Freshwater is within the Smaller Regeneration Area of West Wight. However, notwithstanding the appellant's concerns regarding where the boundary for the settlement lies, it is not disputed that the appeal site lies outside of the boundary. Neither is it part of the appellant's case that the appeal site is immediately adjacent to the boundary. Accordingly, for the purposes of the IP the site lies within the wider rural area.
7. The supporting text¹ 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.
8. I am referred to parts of the Strategic Housing Market Assessment and Housing Need Assessment Final Report for the Isle of Wight 2018 relating to the West Wight sub-market area² as evidence that the majority of housing need in West Wight is for two and three-bedroomed properties. My attention is also drawn to an extract from the document that comments on demographic information relating to wheelchair users. However, the West Wight sub-market area covers a sizable area³. Additionally, based on the information provided, the observations in relation to the need for suitably adapted homes was a general one applicable across the Island.
9. Furthermore, the term '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 the information shows a general level of need within West Wight and would be particularly suited to meet requirements of the appellant's family, this falls short of demonstrating a specific local need that relates to the appeal site location as stipulated in policy SP1. The wording of policy FNP6 of the Freshwater Neighbourhood Plan 2017-2027⁴ to which I am referred, appears to make reference to general local need and therefore would not lead me to a different view.
10. The nearest notable settlement to the appeal site is Freshwater where there are a reasonable range of facilities provided, commensurate with its designation as a Smaller Regeneration Area. They include a supermarket,

¹ Paragraph 5.31 of the IP

² Paragraph 5.2.5 Design and Access Statement & Page 6 Appellant's Appeal Statement

³ Figure 16, Design and Access Statement

⁴ Page 8, Appellant's Appeal Statement

shops, schools and community facilities, with the supermarket being under a mile from the appeal site.

11. The cycling route is reasonably flat but would involve using a relatively busy road which could discourage less confident cyclists from using it. Moreover, the pedestrian route to Freshwater has limited lighting and for most of its length is adjacent to a main road. Although there is a pavement, in notable stretches it is level with the carriageway surface and demarcated with a painted line rather than a kerb. When combined with the distance, these factors may deter its frequent use by some pedestrians.
12. The site is within reasonable walking distance of bus stops to the north and south. The evidence provided⁵ indicates that the Route 12 service to the south would provide access to Freshwater and the principal town of Newport, but it is of limited frequency. The bus stop to the north is served by the Needles Breezer, a seasonal service aimed primarily at tourists. The pedestrian routes to both sets of bus stops involve stretches along Southdown Road which I observed to be uneven and poorly surfaced with no formal pavement. Furthermore, there are no shelters at the bus stops which are adjacent to relatively busy roads. In inclement or dark conditions, passengers waiting for a bus would be exposed to the elements and may feel vulnerable. The more regular Route 7 bus stops are some considerable walking distance away. Cumulatively, this may prevent some users from taking the bus routinely.
13. My consideration of the availability of public transport in assessing the accessibility of the site is consistent with the general approach taken by the Inspectors in the two appeal decisions to which I am referred⁶.
14. Overall, whilst I accept there would be a degree of choice as to how future occupants might travel, it is nevertheless likely that given the location of the appeal site, vehicular trips by car would be the dominant mode of travel. Therefore, this would not be fully in accordance with the thrust of policy SP7 of the IP which supports proposals that increase travel choice and provide alternative means of travel to the car.
15. My attention is drawn to policy DHWN5 of the Draft Island Planning Strategy which permits residential infilling in locations outside of settlement boundaries. However, this does not form part of the development plan and given the early stage of the plan, it may well be altered as a result of consultation and examination. Therefore, it attracts little weight in my assessment.
16. Reference is made to other residential development being permitted further from the settlement boundary⁷. The Council indicate that two of those examples were considered as one for one replacement dwellings and as such different policy considerations were applicable. However, given the limited information provided in relation to the circumstances of those proposals, I am prevented from making a meaningful comparison with the case before me. Therefore, they attract limited weight. In any event, I have determined the proposal on its own merits.

⁵ Appendices G & H, Bus map and timetable, Council's Statement of Case

⁶ References APP/P2114/W/17/3179322 and APP/P2114/W/17/3184329 Appendices I and J, Council's Statement of Case

⁷ P/00620/18 Norton Green, P/00260/17 Southdown Road & P/01227/18 Green Meadows, Freshwater, pages 4 & 6 Appellant's Appeal Statement.

17. Therefore, I find that, although the location of the site would allow some degree of choice for journeys other than by car, occupants are nevertheless likely to rely on the car as a principal means of travel. As such 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, the proposal would be inconsistent with policy SP1 of the IP relating to the location of new housing development. In addition, although not cited on the decision notice, the proposal would not fully accord with policy SP7 of the IP which seeks to promote travel choice.

Solent and Southampton Water Special Protection Area

18. 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.
19. 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.
20. 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.
21. The Solent Recreation Mitigation Strategy, December 2017 (SRMS) 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 which are updated each year.
22. The Council indicate that a financial contribution of £671⁹ represents proportionate mitigation for a three bedroom house in line with the strategy and that this should be secured by a legal agreement.
23. The appellant has submitted a signed Unilateral Undertaking dated 25 March 2019 (UU) and subsequent signed deed dated 12 May 2020 that, in combination, would provide a financial contribution of £671 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.
24. I am satisfied that the obligation meets the 3 statutory tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended)

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

⁹ Appendix D, Councils Statement of Case

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.

Other matters

27. The UU sets out a formula and requirement to make a financial contribution towards the provision of affordable housing that broadly aligns with the guidance in the Affordable Housing Contributions, Supplementary Planning Document, March 2017 (SPD). The SPD gives further details explaining how policy DM4 in the IP will deliver affordable housing over the plan period. Both Policy DM4 and the SPD predate paragraph 63 of the Framework which states that provision of affordable housing should not be sought for residential development that are not major developments, other than in designated rural areas. However, the information submitted indicates that the site lies within the Isle of Wight Area of Outstanding Natural Beauty, which is a designated rural area for the purposes of paragraph 63. Based on the evidence before me, it appears that the obligation meets the statutory tests in Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) as well as those in paragraph 56 of the Framework and is suitably secured by the UU.
28. Concerns have been raised in relation to wildlife and trees at the site. However, a tree survey and several ecological assessments accompanied the application which generally concluded that suitable protection and mitigation measures could be incorporated as part of the proposed development and in some cases secured by planning condition. On that basis, I have seen little evidence that undermines that provided that would lead me to find otherwise.
29. Freshwater Parish Council and some local residents indicate, that amongst other concerns, they do not consider the design to be aesthetically pleasing. However, the detached proposal would be sited between existing detached residential development along Southdown Road in which there is a mixture of housing style, form and materials. The scale of the dwelling and its relationship to the road would be reasonably in keeping with the established low density layout. Moreover, a condition to ensure the use of high quality materials could be employed. As such, the evidence does not show that there would be harm to the character and appearance of the area, which is reinforced by the conclusions of the Council in this regard.

30. Some of the representations received refer to the potential for damage to verges and concerns about the upkeep of the unadopted Southdown Road. However, vehicular access to the appeal site from Southdown Road already exists and appears adequate. I have not been provided with evidence to show that alternative recourse to secure its maintenance is absent, albeit that this is not administered by a public body. Moreover, planning decisions are taken in the public interest and therefore, do not seek to protect private interests.
31. Concerns also refer to the potential for further development in the future. However, I have considered the merits of the proposal before me against the development plan policies and other relevant material considerations. If other development proposals were to be submitted in the future, then this would be subject to a similar process.

Planning Balance

32. There is no dispute between the parties that the Council's Five Year Land Supply Update 2018¹⁰ shows that as of 1 April 2018, the Council cannot demonstrate a five year land supply. Paragraph 11 of the Framework indicates that in these circumstances the most important policies for determining the proposal relating to the supply of housing should not be considered up-to-date. It follows that policy SP1 setting out the spatial strategy attracts only limited weight.
33. The presumption in favour of sustainable development in paragraph 11 of the Framework 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).
34. In line with paragraph 177 of the Framework, following an appropriate assessment, I have not found that there would be a significant effect on a habitats site that would prevent the application of the presumption in favour of sustainable development. Furthermore, based on the information provided, there is no other reason to 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. My general approach in this regard is similar to that of the Inspector in the appeal¹¹ to which I have been referred. Nevertheless, as the specific circumstances of each case differ, the relevant factors in the balancing exercise in this case are set out below.
35. 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 and the limited accessibility of the site contrary to policy SP7 of the IP. However, combining the modest scale of the proposal with the degree of choice as to the modes of transport available to future occupants of the dwelling to nearby facilities, overall the resulting tangible adverse impact arising from the conflict with the development plan would be limited, and unlikely to seriously undermine the spatial strategy.

¹⁰ Page 8, Appellant's Appeal Statement and Appendix B, Council's Statement of Case

¹¹ Reference APP/P2114/W/19/3228085, Appendix K, Council's Statement of Case

36. The main benefit of the proposal would be the provision of an additional dwelling to the housing supply where there is unmet demand and securing a financial contribution towards the provision of off-site affordable housing. It would also result in some 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 would not only be beneficial to the appellant and his family but as it has been designed to be particularly suited to occupants who have restricted mobility, there would be a wider benefit for future occupants.
37. 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.
38. 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 policies SP1 and SP7 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

39. The three year period in which the planning permission may be implemented is a statutory requirement. 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.
40. Given the generic references to materials used in the application form I have imposed a condition requiring the agreement of the finish of the external materials to be used in order to safeguard the overall quality of the design.
41. In addition, the tree survey reflects the wooded nature of the site and indicates some trees will need to be removed but that many can be retained. As such, suitable protection measures for the retained trees should be agreed and secured to safeguard them during the construction phase. By definition it is necessary to agree these measures prior to the commencement of development. Furthermore, conditions 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. In some instances, I have simplified and amalgamated the wording of the conditions suggested by the Council to remove unnecessary detail. The implementation condition imposed covers the planting in the landscaping scheme for a period of 5 years from completion, including the retained trees.
42. Due to the passage of time, it is necessary to resurvey the site prior to the commencement of development to ensure that badger activity has not changed since the original ecological assessment was undertaken. Otherwise, to ensure appropriate measures for the protection of wildlife are implemented the development should take place in accordance with the recommendations in the ecological impact assessment provided.

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

43. Finally, in the interests of highway safety it is appropriate that a condition secures the parking and turning areas shown on the plan prior to the first occupation of the dwelling.

Conclusion

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

Helen O'Connor

Inspector

Schedule of Conditions (9 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: Site and Location plan, drawing no. 371/VW/17/1 Rev C ;Plans and elevations, drawing no. 371/VW/17/2 Rev B and Tree Constraints Plan showing Proposed Layout, drawing no. TCP/S/03.
- 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) No development shall take place until an Arboreal Method Statement has been submitted to and agreed in writing by the local planning authority detailing how the potential impact to the trees will be minimised during construction works, including details of protective tree fencing to be installed for the duration of construction works. The agreed method statement will then be adhered to throughout the development of the site.
- 5) 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.
- 6) 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 (including retained 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.
- 7) Prior to commencement of works a survey (undertaken by a suitably, qualified ecologist) shall be undertaken to ensure that badger activity at the site has not changed. If evidence of current use is found from any setts, no works shall commence until a further survey has been carried out along with details of any mitigation measures proposed, and this has been approved in writing by the local planning authority. The works shall only be undertaken in accordance with the agreed details and any mitigation shall be implemented in full during the works and prior to the first occupation of the dwelling.
- 8) All works, including site clearance shall be carried out in accordance with the precautionary methods detailed within the submitted Ecological Impact Assessment (Arc, survey date Autumn and Winter 2017).
- 9) The dwelling hereby permitted shall not be occupied until space has been laid out within the site in accordance with drawing number 371/VW/17/1 Rev C for 2 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The space shall thereafter be retained and used for this purpose.