



Appeal Decision

Site visit made on 5 October 2020

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2020

Appeal Ref: APP/X1735/W/20/3252953

Fowley Cottage, 46 Warblington Road, Emsworth PO10 7HH

- 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 Charles Glanville against the decision of Havant Borough Council.
 - The application Ref APP/19/00623, dated 11 June 2019, was refused by notice dated 29 April 2020.
 - The development proposed is retain the existing 'Fowley Cottage' dwelling and construction of 7 No. detached dwellings, two on the Warblington Road frontage and five to the rear garden area. Access to Plot 5 to be taken off Warblington Road, access to Plot 1-4, 6 and 7 to taken off Curlew Close.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the submission of the original application, the proposed development was changed by the appellant to include an additional dwelling, bringing the number of proposed dwellings to seven. The description of development in the banner heading above includes this change and is taken from the Council's decision notice and the appeal form.
3. The Council's second reason for refusal refers to Policies H3 and H13 of the Pre-Submission Havant Borough Local Plan 2036 (2019) (Pre-Submission Plan). This is an emerging plan which was consulted on in early 2019 following which further changes have been made. It has not been submitted for examination.
4. Paragraph 48 of the National Planning Policy Framework (the Framework) sets out that weight may be given to relevant policies in emerging plans according to its stage of preparation; the extent to which there are unresolved objections to relevant policies; and the degree of consistency with the Framework. The Pre-Submission Plan is at an early stage of preparation. Whilst its policies show a potential direction of travel, it is not yet known what level of objection these are likely to encounter. I therefore give this plan very limited weight.
5. A referendum on the Emsworth Neighbourhood Plan (ENP) was due to be held in May 2020. In response to the coronavirus (COVID-19) pandemic, the referendum has been postponed. The Planning Practice Guidance (PPG)¹

¹ Paragraph: 107 Reference ID: 41-107-20200925

advises that in these circumstances the plan can be given significant weight in decision-making, so far as the plan is material to the application.

6. During the course of the appeal the appellant submitted a completed signed planning obligation by way of a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 2 October 2020. This deals with contributions towards mitigation against the impact of development on the Solent Special Protection Areas (SPAs) in accordance with the Solent Recreation Mitigation Strategy (SRMS). I will discuss this in more detail later in this decision.
7. The Council's fourth reason for refusal concerned the absence of full and up-to-date ecological information including all necessary survey, assessment and mitigation information. This information was provided and the Council has acknowledged that a re-consultation on this matter should have taken place prior to the application being determined. The County Ecologist has now been consulted and confirmed that no additional survey work is required and that subject to a compliance condition, the reason for refusal has been addressed. I have proceeded on this basis.

Main Issues

8. The main issues are whether or not the proposed development would:
 - make efficient and effective use of land having particular regard to site constraints and the character of the area;
 - provide adequate flood risk mitigation; and
 - affect the integrity of the Solent European Sites².

Reasons

Efficient use of land

9. The Council has identified that it has a finite amount of undeveloped land and environmental designations in the borough which limit opportunities for new development. Within this context, the Council's strategy for the delivery of new growth is to concentrate development within the urban areas where there are existing facilities and where new development would have the least impact on the range of highly protected designations within the borough. To support this approach, Policy CS17 of the Havant Borough Core Strategy (2011) (Core Strategy) sets out that development will be permitted that makes the most effective use of land in the borough.
10. Policy CS9 of the Core Strategy supports housing proposals which achieve a suitable density of development for the location, taking into account accessibility to public transport and proximity to employment, shops and services in addition to respecting the surrounding landscape, character and built form. The supporting text of the policy sets out density thresholds with low density development being development providing up to 45 dwellings per hectare (dph).

² Chichester and Langstone Harbour SPA, Chichester and Langstone Harbour Ramsar Site, Solent Maritime Special Area of Conservation and the Solent and Dorset Coast Potential SPA

11. Policy D3 of the ENP sets out that new development should make the most efficient use of land and be developed at the optimum density whilst taking into account site capacity and context. This policy is consistent with the Framework and carries significant weight.
12. Paragraph 117 of the Framework sets out that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment. Paragraph 122 supports development that makes efficient use of land where it takes into account the desirability of maintaining an area's prevailing character. Policies CS17 and CS9 together are broadly consistent with this approach.
13. The Framework goes further and sets out at Paragraph 123 that where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning decisions avoid homes being built at low densities, and ensure that development makes optimal use of the potential of each site.
14. The PPG³ provides guidance on making effective use of land and what factors should be taken into account in establishing appropriate densities on a site. This includes assessments and measures of accessibility, character, environmental and infrastructure constraints or capacity issues and market viability.
15. Fowley Cottage is located within a residential area within the urban area of Emsworth. It is a large detached house with a tennis court and extensive gardens to the front and rear. It occupies a substantial and broadly rectangular plot just over 1 hectare in size which extends from Warblington Road to a public footpath and the harbour/seafront beyond. The appeal site excludes the existing house, tennis court and land adjacent to the coast at the south of the site and includes the road forming Curlew Close to the west. It is indicated to be about 0.82 hectares. The site is in an accessible location, within 800 metres walking distance of Emsworth town centre and just over 1 kilometre from the railway station.
16. The site is physically constrained by a public foul water sewer easement which crosses the southern part of the site. There are a number of statutorily protected trees along the eastern site boundary and two within the front garden that should be retained in addition to other high value trees on and adjacent to the site. The southern part of the site is within a sea flood zone. These site constraints are not disputed by the Council and it is agreed that they would reduce the developable area of the site and would need to be taken into account in the design of any proposed development.
17. Curlew Close, from which the proposed houses within the southern section of the appeal site would be accessed, has a restrictive covenant. This limits the number of dwellings that can be accessed from Curlew Close to five dwellings between the existing house and the harbour. The appellant has indicated that the covenant was entered into in April 2019 and the beneficiaries of this have confirmed that they will not remove or relax it. However, the restrictive covenant would be a private matter between the parties involved and I have no substantive evidence that this could not be altered by agreement. In any case,

³ Paragraph: 004 Reference ID: 66-004-20190722

this is a legal matter which falls outside the planning merits of the scheme. As such, I have given this limited weight in my decision.

18. The surrounding area is suburban, characterised by large detached houses generally set within generous but not overly large plots. The properties immediately to the west of the appeal site fronting Warblington Road and off Curlew Close, as well as a number of harbourfront properties off Beacon Square to the east, are larger and located within more sizeable plots than surrounding development. None of these properties occupy as extensive a plot as the appeal site which is unusually large. Properties directly east of the appeal site on the inland stretch of Beacon Square are more modestly sized.
19. The proposed development would provide seven large detached houses, six of which would be accessed off Curlew Close. All the proposed houses would provide generous amounts of internal space and occupy a large footprint although plots 4 and 7 would be around half the size of the other plots.
20. Large, detached houses are not uncharacteristic of the area. However, the proposed houses would be substantial, with larger footprints and generally more spaciouly arranged than surrounding development. The proposed arrangement would not be dissimilar to that of adjacent properties on Curlew Close and towards the harbour front on Beacon Square. However, these developments are not typical of the character of development along most of Warblington Road or the roads leading off it towards the harbourfront. Within this wider context, a development of smaller and less spaciouly arranged properties of an appropriate design would be in keeping with the prevailing character of the surrounding area.
21. Development along the harbourfront facing towards the Chichester Harbour Area of Outstanding Natural Beauty and towards the south of the site is more spacious than that further inland. However, the site occupies a relatively narrow section of the harbourfront and I have no substantive evidence that a higher density scheme, if appropriately designed, could not preserve the open landscape character to the same extent as the appeal scheme would at the southern end of the site.
22. The Council through Emerging Policy H3 is seeking higher densities of between 40 and 55 dph for the area. In addition, the Council's Emerging Policy H13 was initially seeking the allocation of the site for around forty dwellings which through the consultation process has been revised down to around twenty dwellings. However, as these emerging policies and the supporting evidence are subject to outstanding objections and yet to be tested at examination, they carry very limited weight at this stage although I accept that they do set out a clear direction of travel.
23. The surrounding area is low density, indicated to be around 10.35 dph. The proposed development, at 8.5 dph would be even lower. When site constraints are taken into account this would increase density on the appeal site to 14.4 dph. However, I have no comparable information about the net density of the surrounding area. Even if the density of the proposed development is higher than that of surrounding development this would appear to be marginally so.
24. Whilst the appeal scheme has been developed to take into account the site constraints as set out in the Design and Access Statement, an outline scheme

for nineteen dwellings on the site has been submitted to the Council in January 2020. Whilst not pre-judging the outcome of this application and noting that it does not include the retention of the original dwelling house or tennis court, it is evident that this has taken into account the physical site constraints including the trees, sewer easement and flood zone, and proposes a higher density of development than the appeal scheme.

25. The National Design Guide 2019 sets out that well-designed new development makes efficient use of land with an amount of development that optimises density. It also relates well to and enhances the existing character and context. In view of my findings relating to the character of the area and notably the differences between the developed areas directly east and west of the site, I have no substantive evidence before me that a higher density of development could not be achieved on site and also achieve a good design.
26. The Council can demonstrate a 5.4 year supply of deliverable housing land. It has also met and marginally exceeded its housing delivery requirements for the past three years. The proposed changes to the Pre-Submission Plan indicate that the Council would be able to meet its objectively assessed housing need of 10,433 homes with a small buffer of 51 homes. However, this would be reliant on all the sites being delivered during the plan period. These figures would need to be fully tested through the examination process. However, given the very small buffer in combination with the finite amount of developable land and environmental constraints within the borough, the need to secure optimal and increased densities on available sites is persuasive in these circumstances.
27. The appellant has referred to his pre-application discussions where the Council made no reference to density concerns. However, I am mindful that provision of pre-application advice is not binding on the Council. Furthermore, these discussions pre-dated the revised Framework and the publication of the Pre-Submission Plan. In any case, this is essentially a procedural matter that does not relate to the planning merits of the appeal proposal.
28. The proposal would be contrary to the Council's approach as set out in the Core Strategy, the ENP as well as the direction of travel in the Pre-Submission Plan. More fundamentally, it would be contrary to the Framework objectives to make efficient use of land and to refuse applications which fail to do so.
29. I conclude that the proposed development would not make efficient and effective use of land having particular regard to site constraints and the character of the area. It would therefore conflict with Policies CS9 and CS17 of the Core Strategy as referred to above. It would also not accord with the Framework which supports development that makes efficient use of land whilst taking into account the character of the area.

Flooding

30. The appeal site falls within Flood Risk Zone 1 but is adjacent to the harbourfront which falls within Flood Risk Zones 2 and 3. The appellant submitted a Flood Risk Assessment (FRA) with its original application for six dwellings. This confirmed that due to the topography of the site, part of the proposed development would fall within the estimated future tidal flood risk area for 2115.

31. The Environment Agency (EA) objected to the proposal on the grounds that the FRA failed to take the impacts of climate change into account adequately. In particular, the flood risk mitigation was considered to be inadequate because it would not make the development resilient to flood levels for 2115. In addition, the EA was concerned that the FRA did not consider the effects of a range of flooding events nor that it provided adequate consideration of the requirement for flood emergency planning including flood warning and evacuation.
32. During the course of the appeal, the appellant submitted an updated FRA to reflect the increased number of proposed houses and to address the EA's concerns. The Council has re-consulted the EA on the revised FRA although at this stage no response has been provided. Had I been minded to allow the appeal, I would have sought further comments. However, given my findings in respect of the use of the land, there has been no need for me to pursue this matter further.

Solent Special Protection Areas

33. The appeal site lies within 5.6 kilometres of the Chichester and Langstone Harbours Special Protection Area. In addition, all of Havant Borough, and therefore the appeal site, is within the catchment of a wastewater treatment works that drains into the Solent European Sites. These are protected as European Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site. I am the competent authority for the purposes of this appeal.
34. The Council has determined that additional residential development would, in combination with other plans and projects have a significant effect on these protected sites through additional recreational pressures and nutrient output. In these circumstances, the Council considers that appropriate mitigation would be required. The appellant has accepted the need to provide a financial contribution towards the SRMS. This would be secured through the submitted UU.
35. The Council has published a Nutrient Neutrality Position Statement and Mitigation Plan (2020) which sets out an off-site scheme to provide for mitigation in respect of nutrient discharge into the Solent European Sites. The scale of mitigation is determined by a nutrient budget and would be secured through a Grampian style condition requiring the mitigation to be in place prior to any permitted development being occupied. The appellant has agreed to the imposition of a Grampian style condition to secure appropriate mitigation to achieve nutrient neutrality prior to occupation. The Council has indicated that there is a reasonable prospect that the Grampian style condition could be discharged.
36. Notwithstanding the Council's findings in respect of this, as the competent authority, I am required to carry out an appropriate assessment of the effect of the proposed development. However, as I have found that the scheme is unacceptable for other reasons, I do not need to pursue this matter further.

Other Matter

37. Local residents have raised concerns about a higher quantum of development on the site as set out in alternative schemes and impacts arising from that. This has led to some support for the appeal scheme. However, those alternative schemes are not in front of me. I have taken these comments into account however they do not alter my conclusions.

Conclusion

38. For the reasons set out above, I conclude the appeal should be dismissed.

Rachael Pipkin

INSPECTOR