
Appeal Decisions

Site visit made on 17 November 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2020

Appeal A: APP/H1705/W/20/3257071

Land north of Ramsholt Close and east of Mary Lane, North Waltham, Basingstoke RG25 2BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr P Sweeney (Forward Developments Ltd) against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 20/00749/PIP, dated 9 March 2020, was refused by notice dated 25 June 2020.
 - The development proposed is minor residential housing development of up to 9 new dwelling houses.
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Appeal B: APP/H1705/W/20/3257074

Land at Westside Dairy, Steventon Road, North Waltham, Basingstoke RG25 2BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr P Sweeney (Forward Developments Ltd) against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 20/00750/PIP, dated 9 March 2020, was refused by notice dated 18 June 2020.
 - The development proposed is minor residential housing development of up to 6 new dwelling houses.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. The site address in the heading above in respect of Appeal B is taken from the appeal form and decision notice, since it more accurately describes the site address than that given on the application form.

Main Issues

4. The main issues in respect of both appeals are:
 - Whether the proposed development comprises habitats development for which permission in principle (PIP) cannot be granted; and

- Whether there is sufficient information to assess the potential impact of the development on the North Waltham Conservation Area (NWCA) and the settings of nearby listed buildings for the purposes of granting PIP.

Background

5. Both appeal proposals are for a PIP. In accordance with the *Planning Practice Guidance* (the Guidance) and the *Town and Country Planning (Permission in Principle) (Amendment) Order 2017* (the 2017 Order), this is an alternative way of obtaining planning permission for housing-led development, which separates the consideration of matters of principle for the proposed development (first stage) from the technical detail (second stage).
6. Paragraph 012 of the Guidance states that the scope of a PIP application is limited to location, land-use and the amount of development, and that other matters should be considered at the Technical Details Consent (TDC) stage¹. It confirms that local authorities cannot list the information they require for applications for PIP in the same way they can for applications for planning permission.
7. The Guidance also confirms that, following a grant of a PIP, the site must receive a grant of TDC before development can proceed, and that other statutory requirements may apply at this stage, such as those relating to protected species or listed buildings².
8. For the avoidance of doubt, both appeal proposals are at the first stage. In respect of residential development, an applicant can apply for a PIP for a range of dwellings by expressing a minimum and maximum net number of dwellings as part of the application. In this instance, PIP has been sought for up to 9 dwellings on the Appeal A site and up to 6 dwellings on the Appeal B site. I have determined both appeals on that basis, having regard to the requirements of the 2017 Order and the Guidance.
9. The site of Appeal A comprises agricultural grassland located behind residential properties fronting Mary Lane. It is surrounded by dwellings to the north and west and farmland to the east and south. Vehicular access is via a farm track to the north of the site.
10. The site of Appeal B is occupied by redundant agricultural/equine buildings and associated areas of hardstanding. Vehicular access is from Steventon Road, and the site is surrounded by open countryside on 3 sides, with a dwelling to the south, and residential development on the opposite side of the road.
11. Both appeal sites are located within open countryside, outside and adjacent to the designated Settlement Policy Boundary of North Waltham. The site of Appeal B and part of the proposed access to the site of Appeal A lie adjacent to the NWCA and the remainder of the Appeal A site is sited within close proximity of the NWCA boundary.

¹ Paragraph: 012 Reference ID: 58-012-20180615 Revision date: 15 06 2018

² Paragraph: 003 Reference ID: 58-003-20190615 Revision date: 15 06 2018

Reasons

Whether habitats development

12. The 2017 Order states that councils may not grant PIP in relation to habitats development, which is defined as development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site.
13. Both appeal sites lie within the relevant catchment area of the River Test, which drains into the Solent, where Natural England have concluded that all new residential development, cumulatively with other residential developments, will potentially have a significant effect upon the nature conservation interests of the Solent and Southampton Water Special Protection Area and Ramsar and Solent Maritime Special Area of Conservation (the European Sites). This potential harm would arise from eutrophication at the European Sites arising from nitrogen and phosphorus input to the water environment as a result of wastewater from housing development. The harmful effects of an excessive presence of nitrates, including thick areas of green algae, on the protected habitats and bird species of the European Sites, has already been identified.
14. The Guidance states that, for sites where development is likely to have a significant effect on a qualifying European Site or a European offshore marine site without any mitigating measures in place, the local planning authority should ensure that an appropriate assessment has been undertaken before consideration of the grant of PIP. If satisfied, after taking account of mitigation measures in the appropriate assessment and concluding that the development will not adversely affect the integrity of the protected site, then, subject to compliance with other statutory requirements regarding the PIP process, it can grant PIP.
15. The local planning authority, as the competent authority, can only take account of mitigation measures as part of an appropriate assessment, not at the screening stage when determining whether an appropriate assessment is required. Natural England has advised that, in the absence of an agreed nitrate mitigation solution, and, given the uncertainty as to whether additional housing would further deteriorate the European Sites, the undertaking of a nitrate budget calculation to demonstrate that a proposal would be nitrate neutral, without requiring mitigation, could be sufficient to demonstrate that a proposal is not habitats development.
16. The appellant's view is that neither of the appeal proposals constitute habitats development, as they would not result in a significant effect on the European Sites. In coming to this view, the appellant refers to the Natural England guidance document titled *Advice on Achieving Nutrient Neutrality for New Development in the Solent Region*. The appellant contends that, in respect of both appeal developments, when using the worked examples within this document, there would be no requirement for nutrient neutrality. The appellant further states that, even should nitrate compensation be required, this could be ensured by measures such as new tree planting and soft landscaping and the creation of local ponds, the details of which the appellant proposes be dealt with at the TDC stage, when mitigation could be ensured by means of a S106 legal agreement.

17. As matters stand, the appellant has not provided site-specific nitrate budgets, nor satisfactorily demonstrated that either appeal scheme would be nitrogen-neutral, and there are no detailed mitigation proposals in place as part of either of these appeals to directly address the likely significant effects upon the European designated sites.
18. For the above reasons, I therefore conclude that, in the case of both **Appeal A and Appeal B**, the appellant has not satisfactorily demonstrated that the proposed development does not comprise habitats development, and that, as such, the PIP cannot be granted in accordance with the 2017 Order.

Impact on the settings of heritage assets

19. Section 66 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* (the 1990 Act) requires local planning authorities to have special regard to the desirability of preserving the setting of listed buildings when considering whether to grant PIP. Paragraph 189 of the *National Planning Policy Framework 2019* (the Framework) states that, in determining applications, local planning authorities should require applicants to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail is to be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.
20. As such, notwithstanding the PIP validation requirements set out in the 2017 Order, I find that, in principle, the Council has acted reasonably in requiring a statement of significance in respect of any listed buildings which are potentially affected by the appeal schemes. In the case of the Appeal B scheme, I concur with the Council that the nearby Grade II listed buildings of St Michael's Church and North Waltham Primary School could potentially be affected by the development proposal.
21. In the case of Appeal A, I have no details before me regarding specific listed buildings whose position in relation to the site is such that they would be potentially affected by the appeal scheme. As such, I find that the Council has not demonstrated that a statement of significance is required in order to fulfil the duty under Section 66 of the 1990 Act.
22. Section 72 of the 1990 Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas when exercising any functions by virtue of the Planning Acts, with respect to any buildings or other land in a conservation area.
23. The site of Appeal A is within a part of the setting of the NWCA that the Council's Conservation Area Appraisal Map has identified as positively contributing to the significance of the NWCA. However, neither Appeal A nor Appeal B relate to development within the NWCA. As such, having regard to the above duty under Section 72, the PIP validation requirements set out in the 2017 Order, and the small-scale residential nature of both appeal schemes, I am not persuaded that a statement of significance is necessary at the PIP stage having regard to the potential impact of both appeal schemes on the significance of the NWCA. I consider that this matter can be properly addressed at the TCD stage when further details of the developments would be available.

24. For the above reasons, in respect of **Appeal A**, I therefore conclude that, the Council has not satisfactorily demonstrated that insufficient information has been submitted to assess the potential impact of the development on the NWCA and the settings of any listed buildings for the purposes of granting PIP. This is having regard to the duties under Sections 66 and 72 of the 1990 Act, and the guidance in Paragraph 189 of the Framework, as mirrored in Policy EM11 of the *Basingstoke and Deane Local Plan 2011 – 2029* (2016) (the Local Plan).
25. For the above reasons, in respect of **Appeal B**, I therefore conclude that insufficient information has been submitted to assess the potential impact of the development on the settings of nearby listed buildings, but that the Council has not satisfactorily demonstrated that insufficient information has been submitted to assess the potential impact of the development on the NWCA, for the purposes of granting PIP. This is having regard to the duties under Sections 66 and 72 of the 1990 Act, and the guidance in Paragraph 189 of the Framework, as mirrored in Policy EM11 of the Local Plan.

Other Matters

26. I am not persuaded by the appellant's view that the PIP application should not have been registered by the Council if considered to comprise habitats development. The 2017 Order sets out the validation requirements for PIPs, which do not preclude validation in these circumstances.
27. The appellant has referred to inconsistency by the Council in recently approving other developments in the locality which would similarly impact on the European sites. The evidence before me is that a PIP was granted within the same village before the Council had been made aware of the nitrates issue by Natural England (Ref 19/01954/PIP). I have not been provided with specific site, scheme and planning history details of any other such approved schemes. In any event, I must determine the appeal on the basis of the merits of the appeal scheme before me.
28. The Council has confirmed that it cannot currently demonstrate a five-year housing land supply. Having regard to Paragraphs 11 d) and 177 of the Framework, and my findings in respect of the first main issue, I find that the presumption in favour of sustainable development does not apply in this instance.
29. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, both appeal proposals would perform well in that they would be close to a settlement where access to facilities is likely to be greatest.
30. In terms of its component dimensions, there would be some social benefits in providing either up to 6 or up to 9 additional dwellings. Economic advantages would also arise from the construction and occupation of the new housing. However, these benefits do not outweigh the conflict that I have identified in respect of the main issues. As a result, the environmental role of sustainable development would not be achieved.
31. Notwithstanding that the Framework encourages Local Planning Authorities to approach decisions in a positive and creative way, this is not unqualified, and

would not address, or outweigh, the aforementioned conflict that I have identified in respect of the main issues. I am not persuaded otherwise by the appellant's submitted statistics in respect of local planning authority PIP decisions.

Conclusion

32. In the case of Appeal A, whilst I have not concurred with the Council in respect of the second main issue, this does not outweigh the potential harm I have identified in respect of the first main issue.
33. For the reasons given above, I conclude that both **Appeal A** and **Appeal B** should be dismissed.

S Leonard

INSPECTOR