

Appeal Decision

Hearing held on 13 January 2021

Site visit made on 14 January 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Appeal Ref: APP/L1765/W/19/3243574

Land adjacent to Lodge Green, Whiteley Lane, Whiteley

- 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 Whiteley Developments Ltd against the decision of Winchester City Council.
 - The application Ref 19/00426/FUL, dated 26 February 2019, was refused by notice dated 21 June 2019.
 - The development proposed is erection of two detached 5 bedroom houses with detached garages.
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Decision

1. The appeal is dismissed.

Applications for costs

2. At the hearing applications for costs were made by both parties. These applications are the subject of separate decisions.

Procedural Matter

3. The appellant tabled a number of amended plans as part of their statement of case. However, these have been withdrawn. My decision is based upon the plans considered by the Council in determining the application.

Main Issues

4. The main issues in dispute are:
 - a) whether the principle of development is acceptable having regard to the location of the site outside of the settlement boundary of Whiteley and within a settlement gap;
 - b) the effect of the proposal on the character and appearance of the area; and
 - c) whether the proposal complies with development plan policy in respect of housing mix.
5. Later, I shall also give consideration to the issue of Habitats Regulation Assessment and the effect of the proposal on European protected sites. The Regulations have been amended following the UK withdrawal from the European Union, but the requirement for Appropriate Assessment remains unchanged.

Reasons

Settlement boundary

6. The appeal site lies outside of the settlement boundary defined for Whiteley in the Winchester District Local Plan Part 2: Development Management and Site Allocations (2017) (LPP2). For the purposes of policy, it falls outside of the built-up area and therefore in the countryside. Policy MTRA4 of the Winchester District Local Plan Part 1 – Joint Core Strategy (2013) (LPP1) states that permission will only be granted for specified types of development in the countryside. The list of permissible developments does not include new-build market housing.
7. The appellant contends that the settlement boundary has been incorrectly defined and that it should have been redrawn to include the appeal site and other built development to the east of Whiteley Lane. Correspondence from the Council's Head of Strategic Planning indicates that it was not the authority's intention to amend settlement boundaries through LPP2, other than where necessary to allocate a site. Nevertheless, the appellant does not dispute that the Council is able to demonstrate a 5 year supply of deliverable housing land¹, or that it has passed the Housing Delivery Test. Given the healthy land supply position, there is no reason for me to find that settlement boundaries are out-of-date.
8. I conclude that the proposal is contrary to LPP1 Policy MTRA4 by reason of the site's location outside of the settlement boundary. A grant of planning permission would only be justified where material considerations exist to outweigh this policy conflict.

Settlement gap

9. The appeal site is located in the 'Meon Gap' which separates Whiteley from Fareham. The Council accepts that development could, at least in principle, be permitted within a settlement gap provided that it does not conflict with the stipulation of LPP1 Policy CP18 that development should not physically or visually diminish the gap.
10. An application for a single detached dwelling on the site was refused and then dismissed at appeal in 2017. In her decision², the Inspector commented that the ridgeline and enclosed nature of the site means that it cannot be viewed in the context of the separation of the two settlements. It was noted that the position of development at Skylark Meadows has isolated the appeal site in Strategic Gap terms. The Inspector concluded that the site is 'a very small parcel of land within a large Strategic Gap and it does not assist in the intended role to define and retain the separate identity of settlements'. I concur with this analysis.
11. The Council acknowledges the previous appeal decision but points out that it related to a scheme of one dwelling. It argues that the current proposal for two dwellings would have a 'significant impact' on the gap due to its increased visual impact. However, it seems to me that the size of scheme is irrelevant in this particular case. It has been established that the site itself does not play a role in the functioning of the gap and therefore by definition it follows that the proposal cannot undermine the function of the gap or conflict with LPP1 Policy CP18.

¹ As required under paragraph 73 of the National Planning Policy Framework

² APP/L1765/W/16/3153276

Character and appearance

12. The appeal site is broadly rectangular in shape. It comprises a parcel of grassland, with a treed frontage onto Whiteley Lane and various mature trees along the north and rear boundaries. Bordering the site to the north is Hazel Coppice, an extensive area of woodland which is designated a Site of Special Scientific Interest (SSSI). Beyond that is a major employment area comprising large scale office buildings laid out within well-landscaped business parks. To the rear of the site is Skylark Meadows, a private development of very large detached houses, and to the south Lodge Green, a sizeable chalet bungalow. On the west side of Whiteley Lane, and facing towards the site, is a row of detached dwellings of mixed age and style.
13. The site lies within the Whiteley Woodlands Landscape Character Area (LCA) as defined in the Winchester District Landscape Character Assessment (2004). Although the LCA contains a predominance of woodland, there are also various other uses including paddocks, nurseries, and smallholdings. The appellant takes issue with the last Inspector's conclusion that the character of the appeal site is not at odds with the description of the LCA. It is contended that the local character is suburban or urban fringe and that development of the site with housing would be acceptable in that context.
14. The area surrounding the site contains built development, but the immediate environs do not convey a sense of being within a settlement. The suggestion within the appellant's landscape evidence that the site has the feel of a large suburban garden is fanciful. Although the erection of a 2m high fence parallel to the lane frontage has restricted public views across the site, it retains an open quality with a backdrop of mature trees. The strong visual connection between the land and Hazel Coppice, noted in the previous appeal decision, remains. The houses in Skylark Meadows are now screened from the lane by fencing but they do not impinge upon the site's distinctive rural character in any event. Likewise, the stationing of a caravan in the middle of the site, to provide a welfare facility for the landowners, has not significantly altered the prevailing character.
15. The Landscape Character Assessment identifies 'suburbanisation and urban fringe encroachment' as a key issue within this LCA. The proposal is a case in point. New development has incrementally changed the area's character, but this serves to make the remaining pockets of undeveloped open space more valuable, not less. The site does not need to constitute countryside in its traditional sense, or have views of wider countryside, in order to possess an attractive rural character.
16. The architecture of the proposed dwellings would be compatible with other properties in the area. The buildings would be set well back from the lane but their height, bulk and raised position would make them prominent structures, visibly taller than the existing fencing. The creation of driveway entrances would further suburbanise the site to the detriment of its rural character. The retention of trees and proposals for landscaping on the site frontage would not provide adequate mitigation for the adverse impacts arising from the erosion of the visual buffer between Lodge Green and Hazel Coppice.
17. Accordingly, I conclude that the proposal would cause unacceptable harm to the character and appearance of the area. It therefore conflicts with LPP1 Policy CP20 and LPP2 Policies DM15 and DM23 insofar as these seek to ensure that new development respects the qualities, features and characteristics that contribute to the distinctiveness of the local area, including the rural character outside defined settlement boundaries.

Housing mix

18. LPP1 Policy CP2 seeks, amongst other things, to ensure that development provides a range of dwelling sizes. It stipulates that a majority of homes should be in the form of 2 and 3 bed houses, unless local circumstances indicate an alternative approach should be taken, including where there is an imbalance of housing types and sizes in particular parts of the District.
19. The appeal scheme has been designed to reflect the prevailing character of Whiteley Lane which consists mainly of large detached properties. In that respect, there is a logic to the appellant's argument. However, there is no reason why the scheme could not incorporate a greater mix of unit sizes, including at least one 2- or 3-bed unit. The amended plans, whilst no longer being tabled for consideration, demonstrate how easily this could be achieved.
20. The appellant refers to an appeal decision for Melita³. That case turned on whether the replacement of a 2-bed bungalow with a significantly larger dwelling would be acceptable having regard to Policy CE23 of the Winchester District Local Plan Review 2006, which seeks to protect the stock of small (1- or 2-bed) or more affordable dwellings in the countryside. In allowing the appeal, the Inspector concluded that the proposal would reduce the stock of small dwellings in the countryside but this would be outweighed by the benefits to the character and appearance of the area from introducing a scale of development which is appropriate to its setting and bringing the site back into permanent residential use (the existing building being unoccupied and in a very poor state of repair). The circumstances in that case were materially different to those in the current appeal, including in terms of the relevant policy.
21. The development plan makes some allowance for local circumstances when determining housing mix. However, the evidence presented fails to persuade me that a scheme biased towards larger 5-bed dwellings would be the most appropriate solution in this location, or that the proposal would be redressing an existing imbalance in the housing stock in this part of the District. Accordingly, I conclude that the proposal would conflict with LPP1 Policy CP2.

Other Material Considerations

22. The appeal site has a history of enforcement complaints over a 20 year period and the appellant contends that the proposal is an opportunity to resolve this ongoing issue. However, the Council has effective powers to resolve breaches of planning control and furthermore it has the ability under S215 of the Act to require the proper maintenance of land. The potential for unauthorised development or untidy land to have an adverse effect on the amenity of the neighbourhood does not attract any significant weight in favour of the proposal.
23. It was suggested at the hearing that the landowners could use the site as a caravan site or put it to other temporary uses. There is no compelling evidence to suggest that such uses are likely to come about were the appeal to be dismissed, but in any event I do not consider that they would have the same visual impact as permanent residential development. Additional traffic is a genuine concern for local residents, given the narrow width of the lane, but I am mindful that such impacts would be of temporary duration. I have attached the fallback position limited weight.

³ APP/L1765/W/14/3000760

24. Although the proposal has the support of Whiteley Town Council and some residents, other individuals remain opposed to the scheme. A number of neighbours have entered into an agreement with the landowners to ensure that no more than two dwellings can be constructed on the site. However, there has been no formal public consultation outside of the planning application process and this is not a community led scheme in the same way as if the scheme had been proposed under a Neighbourhood Plan. Whilst I have taken full account of all representations from those living nearby, they have not been determinative.
25. At the hearing, the appellant made strong submissions to the effect that the settlement boundary had been incorrectly defined. It was further alleged that the Council was biased towards major developers, illustrated by its willingness to amend settlement boundaries to allow large scale development on the edges of settlements. Such matters are not for consideration in the context of a s78 appeal and should be pursued as part of the process of preparing the next local plan. S38(6) of the Act requires me to determine the appeal in accordance with the development plan unless material considerations indicate otherwise.
26. The proposal would secure a buffer strip parallel and adjacent to Hazel Coppice. There would be some small benefit to the SSSI in terms of keeping activity away from the protected ecology. I have factored this into the planning balance.

European protected sites

27. The parties agree that a financial contribution is required in line with the Solent Recreation Mitigation Strategy, to mitigate the adverse impacts arising from additional recreational disturbance to the Solent Special Protection Areas. I was informed at the hearing that the monies had been paid, but I have not had sight of any payment receipt or more importantly a planning obligation to secure the monies for their intended purpose. As I intend to dismiss the appeal for other reasons I have not pursued this further with the parties.
28. Natural England has advised that the development would result in a surplus of nitrogen reaching the Solent designated sites. Its view is that mitigation would be required to ensure the development is nutrient neutral. This is not disputed. The Council has adopted a Nitrate Mitigation Position Statement which proposes to deal with the issue through the imposition of negatively worded conditions requiring applicants to provide details of the nitrate mitigation measures to be implemented prior to the occupation of their developments.
29. The Council indicated at the hearing that discussions are still ongoing in relation to the various options for achieving nitrate neutrality. However, it advised that there was no strategic solution in place and the authority is not currently taking financial contributions. It is for individual developers to come forward with their own mitigation packages unless and until such time as a strategic approach is agreed.
30. On the evidence available it is clear that Appropriate Assessment would be required prior to any grant of planning permission. As the competent authority I would need to be assured that any mitigation scheme for neutralising nitrogen is certain at the time of Appropriate Assessment so that no reasonable scientific doubt remains as to the effects of the development on the international sites. According to Natural England, this will need consideration of the delivery of mitigation, its enforceability, and the need for securing the adopted measures for the duration of the development's effects, generally 80-125 years.

31. There is no such information before me. It may be that an appropriate solution is agreed during the lifetime of any planning permission. However, in order to conduct an Appropriate Assessment greater certainty regarding mitigation is required now. The suggested Grampian condition does not provide that certainty. That the Council has used such conditions elsewhere does not make the approach acceptable in this particular case.
32. The appeal is being dismissed for other reasons and therefore it does not turn on the European protected sites issue. Nonetheless, as it stands, and for the reasons set out above, the proposal would not meet the requirements for Habitats Regulations Assessment⁴.

Planning Balance and Conclusion

33. The National Planning Policy Framework makes clear that the planning system should be genuinely plan-led. The proposal is contrary to the development plan by reason of the site's location outside of the settlement boundary where policy restricts open market housing. Moreover, it is in conflict with policy requirements on housing mix. I have also judged that the proposal would cause unacceptable harm to the character and appearance of the area.
34. I have taken account of all other considerations put forward by the appellant, including the benefits to the SSSI, the representations of support from residents and the fallback arguments. However, none of these considerations, individually or cumulatively, is sufficient to outweigh the conflict with the development plan taken as a whole.
35. The above balance does not take into consideration my concerns regarding Habitats Regulations Assessment, but this matter serves only to reinforce my view that the appeal should be dismissed. Permission cannot be granted in the absence of a favourable Appropriate Assessment, even if I had agreed the proposal to be acceptable in all other respects.
36. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should fail.

Robert Parker

INSPECTOR

⁴ The Conservation of Habitats and Species Regulations 2017, as amended.

APPEARANCES

FOR THE APPELLANT:

Bryan Jezeph BA DipTP MRTPI FRICS Planning consultant
FRSA
Sue Sutherland BA(Hons) BPhil CMLI Landscape consultant

FOR THE LOCAL PLANNING AUTHORITY:

Nicholas Parker MRTPI Principal Planning Officer – Team Leader South

Stuart Dunbar-Dempsey CMLI Landscape Officer

INTERESTED PARTIES:

Mr & Mrs Knight Local residents

Documents submitted after the hearing

1. Plans for APP/L1765/W/16/3153276
2. Missing figures from Landscape Appraisal
3. Planting plan (Drawing no. CS.647.01C)
4. Plan showing position of ridgeline
5. Committee report for Land at Hill Pound, The Lakes, Swanmore
6. Committee minutes for appeal application
7. Nitrate Budget Calculator
8. Natural England response to the applicant's consultation
9. Committee report for application at Lady Betty's Drive
10. Letter to Cllr Rutter dated 17 June 2019