
Appeal Decision

Site visit made on 26 January 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2021

Appeal Ref: APP/H1705/W/20/3261913

Land South of St Michael's Close, North Waltham RG25 2BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant Technical Details Consent.
 - The appeal is made by Mr Ian Jones against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 20/01255/TDC, dated 19 May 2020, sought consent pursuant to Permission in Principle Approval Ref 19/01954/PIP, granted on 25 October 2019.
 - The application was refused by notice dated 9 October 2020.
 - The development proposed is erection of 2 no. dwellings with associated access, garaging, parking and landscaping.
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Decision

1. The appeal is allowed and Technical Details Consent is granted for the erection of 2 no. dwellings with associated access, garaging, parking and landscaping, pursuant to Permission in Principle Approval Ref 19/01954/PIP for up to 4 no. dwellings at Land South of St Michael's Close, North Waltham RG25 2BP in accordance with the terms of the application Ref 20/01255/TDC, dated 19 May 2020, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Ian Jones against Basingstoke and Deane Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. As part of the appeal submission, in response to the Council's second reason for refusal, the appellant has provided 2 alternative completed Section 106 Planning Obligations in respect of ensuring that the development is nitrate neutral to mitigate against harm to the integrity of the Solent Special Protection Areas (the SPAs). This is a matter to which I later return.

Main Issues

4. The main issues are:
 - The effect of the proposal on flood risk, having particular regard to surface water run-off; and
 - Whether the appeal scheme provides adequate mitigation for the SPAs.

Reasons

Surface water run-off

5. The appeal site comprises undeveloped agricultural land at the end of, and at a higher ground level than, St Michael's Close, adjacent to the southern edge of North Waltham. The appeal scheme comprises the erection of 2 detached bungalows and garages to be accessed from St Michael's Close via a shared access with 2 bungalows located to the west of the site, and to be arranged to comprise a courtyard layout in conjunction with the adjacent bungalows.
6. Whilst the proposal would introduce new built development and hard-surfacing onto the appeal site, and an additional risk of surface water flooding, the appeal scheme is small-scale in nature. The evidence before me is that the site lies within Flood Zone 1, which has a low probability of flooding, in accordance with the Environment Agency's 'Flood Map for Planning'. The Environment Agency's 'Flood Risk from Surface Water' mapping also indicates that the site is located with an area at a very low risk of surface water flooding. The Council's Strategic Flood Risk Assessment (SFRA) confirms that the site is not within a ground-water emergence area.
7. As such, given the site size and nature of the appeal scheme, the appellant was not required to submit a Flood Risk Assessment as part of the planning application, in accordance with the criteria of Policy EM7 of the *Basingstoke and Deane Local Plan 2011 – 2029* (2016) (the Local Plan) which relates to managing flood risk. In such instances, and given the small size of the appeal scheme, it is accepted practice to deal with this matter by means of a planning condition.
8. The appellant's Drainage Technical Note, accompanying the planning application, by Stuart Michael Associates, Ref TN01 Issue 3 dated 27 April 2020, proposed to discharge surface water arising from the appeal scheme by means of an infiltration basin sited near the southern site boundary, with runoff from the built development entering the basin via a porous paved access road. Should infiltration subsequently be found not to be feasible, the appellant acknowledged that an alternative drainage scheme would be required.
9. In refusing the application, the Council were concerned that the submitted drainage details did not satisfactorily demonstrate that the drainage scheme would be feasible in practice, given the location of the proposed infiltration basin at a higher ground level than the new built development, thus requiring surface water to discharge uphill to reach the infiltration basin.
10. Evidence from third parties, including photographs, is that there is a localised surface water run-off issue during periods of heavy rain, whereby surface water flows from the higher ground level at the southern end of St Michael's Close in a northerly direction along the road towards the lower level ground. Third party comments suggest that this has increased following the construction of the 2 dwellings to the side of the appeal site, and concerns have been raised that the appeal scheme would exacerbate the matter due to an increase in built-development on the appeal site. However, I have no substantive evidence before me of the causes of the surface water flooding which has occurred along St Michael's Road, nor that the building of the appeal scheme would be likely to intensify the issue.

11. The appellant's appeal documents include a revised drainage strategy (RDS), Ref TN01 Issue 6 dated 13 October 2020, which proposes the discharge of surface water solely into the porous paved access road, thus omitting the originally proposed infiltration basin from the drainage strategy, albeit that it would remain within the appeal scheme as a habitat enhancement area.
12. The RDS includes surface water calculations to demonstrate that porous paving is capable of accommodating surface water runoff without resulting in flooding for all storm events up to and including 1 in 100 years plus 40% allowance for climate change events.
13. However, in respect of this appeal, the Council remains concerned that, in the absence of supporting infiltration testing by the appellant it has not been confirmed that the ground is suitable for infiltration so that the need for an infiltration basin is negated, noting that the appellant has admitted, that, should infiltration be found not to be feasible, discharge to a nearby water body would need to be sought. The appellant has confirmed that, should drainage to a watercourse not be reasonably practicable, a sewer would be the next option.
14. The revised RDS has been submitted by the appellant as part of a subsequent TDC application in respect of the appeal site, for an identical scheme, and in this case, the Lead Local Flood Authority has advised that the matter could be dealt with by means of a condition, subject to the provision of additional information in respect of infiltration testing results, flow paths and future maintenance arrangements. Having regard to the nature of the appeal scheme, the revised drainage scheme submitted by the appellant, and the lack of any substantive evidence from the Council to the contrary, I find no reason to disagree. I consider that the condition discharge requirements would provide sufficient confidence that measures could be employed to adequately mitigate flood risk.
15. For the above reasons, I conclude that, subject to the aforementioned planning condition, the proposal would be acceptable in terms of its impact on flood risk, having particular regard to surface water run-off. As such, the proposal would accord with Policy EM7 (e) of the *Basingstoke and Deane Local Plan 2011 – 2029* (2016) (the Local Plan) which requires development within an area at risk of flooding to attenuate surface water run-off so that the run-off rate is no greater than the run-off prior to development taking place, or, if the site is previously developed, development actively reduces run-off rates and volumes.
16. For similar reasons, the proposal would accord with Paragraph 163 of the *National Planning Policy Framework 2019* (the Framework) which requires local planning authorities, when determining any planning applications, to ensure that flood risk is not increased elsewhere.

SPAs

17. The appeal site lies within the River Test catchment which flows into the Solent. Natural England has advised that a net increase in housing within this catchment area is likely to have impacts on the integrity of the SPAs. This is due to the prospect of increased levels of nitrogen and phosphorus entering the water from waste water from residential development or agricultural sources, resulting in eutrophication, whereby the resulting thick mats of algae can cause important habitat and bird feeding grounds to be unavailable for use, thereby

affecting the status and distribution of key bird species against the stated conservation objectives of the SPAs.

18. As such, without mitigation, the appeal scheme presents a likely significant effect upon the integrity of these sites, particularly when the impacts are considered in combination with other residential developments in the Solent area. Therefore, it falls to me, as the competent authority, to undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations 2017), of the implications for the sites in view of the conservation objectives of the SPAs. I have undertaken this on a proportionate basis with regard to the evidence submitted by the main parties, including the Council's Appropriate Assessment under the Habitats Regulations 2017, and consultation responses from Natural England.
19. The appellant has submitted two alternative completed Section 106 Planning Obligations as methods of securing the required mitigation. The first would secure nitrate neutrality by means of on-site mitigation through the setting aside of 1.38 hectares of agricultural land adjacent to the proposed development which is within the appellant's ownership. This grazing land would be replaced with woodland planting and wildflower and grassland habitats, to be maintained and set-aside as such in perpetuity.
20. I consider that the mitigation secured by the above means is 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, and therefore meets the statutory tests set out in regulation 122 of the CIL Regulations.
21. As detailed above, the completed UU is acceptable and all of its requirements are necessary to make the development acceptable. The completed UU meets all of the tests as outlined in paragraph 56 of the National Planning Policy Framework.
22. I am therefore satisfied that, subject to the appellant's Planning Obligation dated 20 January 2021 which states on the front page that the obligation is "*With the purpose of providing Nitrate Mitigation Land*", the appeal scheme provides adequate measures to avoid and mitigate its potential adverse impacts on the integrity of the SPAs, in accordance with Local Plan Policies EM4, and CN6. These policies, amongst other things, seek to ensure that significant harm to biodiversity is adequately mitigated and clearly demonstrates that that there would be no adverse impact on the integrity of European designated sites, and for development proposals to clearly demonstrate that infrastructure can be provided and phased to support the requirements of the proposed development and site-specific mitigation measures to be secured by planning obligations.
23. For similar reasons, the proposal would accord with Policies of the Framework which seek to conserve and enhance the natural environment as set out in Chapter 15.
24. The appellant's second Planning Obligation dated 20 January 2021 and subtitled "*With the purpose of providing Nitrate Mitigation Land or to enable participation in a regional scheme*" would allow the appellant to pursue an off-site mitigation option by means of a financial contribution towards a nitrate

tariff/credit based 'Regional Programme', should such a strategic mitigation approach be adopted by the Council in the future.

25. As the competent authority, I need to be satisfied 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. At present, whilst the Council is working with other organisations and Councils to pursue a scheme for strategic mitigation, there is no certainty at present that such a strategy will be adopted by the Council, or, that should such a nitrate credit scheme be available within the appropriate timescale related to the approval of the appeal scheme, that such credits would be available to the appellant, if the scheme is based on a 'first come, first served' basis and demand is greater than credit availability.
26. As such, notwithstanding the involvement of Natural England and that other Councils in Hampshire have adopted a tariff-based scheme, in the absence of details of any such regional scheme with respect to Basingstoke and Deane Borough, and how it would be implemented by the Council, I am unable to agree to this form of off-site mitigation as a future alternative to the proposed on-site mitigation in respect of the current appeal scheme, since I cannot be certain that it would directly address the likely significant effects upon the European designated sites, and the full details and implications of any such proposals remain unknown. For these reasons, there is insufficient information before me to enable me to conclude that the appellant's second Planning Obligation would accord with the aforementioned Local Plan and Framework policies or would meet the statutory tests set out in regulation 122 of the CIL Regulations.

Other Matters

27. Under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act), I am, as the decision maker, required to consider the effects of the development on nearby designated heritage assets. These include the North Waltham Conservation Area (NWCA), which lies to the north of the site, and includes a neighbouring property, Boundary House, which is identified by the Council as a "notable building" making a positive contribution to the character and appearance of the NWCA. They also include listed buildings within the NWCA, such as the Grade II listed Church of St Michael which lies beyond the northern end of St Michael's Close, and several listed buildings within the vicinity of Church Road and the village green/pond.
28. The proposal would alter the setting of the NWCA, but the effect would be neutral, subject to conditions in the interests of the character and appearance of the area, which are detailed below and include materials, soft landscaping and tree protection requirements, and the removal of certain permitted development rights. In coming to this view, I have taken account that the proposal would effectively form an extension of the existing development of 2 dwellings to the west of the site, and of residential development at the southern end of St Michael's Close, which separates the site from the historic core of the conservation area. I have also noted the distance between the new development and Boundary House and the intervening boundary treatment. As such, the proposal would not harm the significance and setting of the NWCA.
29. Due to the separation distances between the appeal site and the closest listed buildings, together with built development in between, which includes housing

in St Michael's Close and Church Road, the appeal scheme would not harm the significance and setting of the listed buildings.

30. In respect of third party objections to the principle of the residential development of the site, this has already been established through the granting of Permission in Principle, ref 19/01954/PIP, on 25 October 2019, which established the principle of building up to 4 no. dwellings on the site.
31. Having regard to third party objections in respect of impacts on neighbouring living conditions, I am satisfied that material harm would not arise in respect of these impacts, having regard to the design of the appeal scheme and the juxtaposition and separation distances between the proposed development and neighbouring properties, and subject to a number of planning conditions, which are detailed below, and include controls during the construction process, restrictions in respect of the design of the development and the removal of certain permitted development rights.
32. I acknowledge the third party concerns in relation to the impact of the appeal scheme on traffic and highway safety. The Highway Authority has raised no objection in respect of traffic generation, access arrangements and parking provision. On the basis of my site inspection, the number of dwellings proposed, and the proposed access, on-site turning and parking arrangements, I am satisfied that these matters have been satisfactorily addressed.
33. Neighbour concerns about harm to wildlife have been noted. I am satisfied, that subject to conditions to ensure the protection of existing biodiversity interests and enhance on-site biodiversity, as detailed below, this matter has been properly resolved.
34. Having regard to third party concerns about the impact of the proposal on local infrastructure, this matter is dealt with by means of the Council's Community Infrastructure Levy (CIL) requirements and is not a matter for determination as part of this appeal.
35. Some other matters raised by third parties, including water supply pressure, power outages, and land ownership are not determining factors in the consideration of this appeal.

Conditions

36. I have considered the Council's suggested conditions in accordance with Paragraph 55 of the Framework and the National Planning Practice Guidance and, where necessary, I have modified them and deleted conditions. In addition to the standard implementation condition, it is necessary to define the plans for certainty (1, 2).
37. In order to protect the character and appearance of the area, conditions are necessary to ensure appropriate materials for the external surfaces of the buildings (3) and the hard surfacing (4), appropriate boundary treatment details (5) and landscaping scheme (6,7) and the protection of trees worthy of retention (8).
38. Conditions are required in the interests of biodiversity mitigation and ensuring net biodiversity gain (9, 10, 11). In the interests of the living conditions of neighbouring occupants, conditions are necessary to restrict the hours of construction-related activities (12, 13), ensure appropriate ground and finished

floor levels for the new dwellings (14) and window design for the proposed bathroom and en-suite windows (15). In the interests of the character and appearance of the area and neighbouring living conditions, a condition is necessary to remove specified permitted development rights (16).

39. A condition is required to ensure the provision and future retention of appropriate car parking for the new dwellings (17). In accordance with my above conclusion on the first main issue, a condition is necessary to ensure that the development provides a satisfactory means of drainage (18).
40. In the interests of sustainable construction, conditions are necessary to ensure that each dwelling meets a water efficiency standard (19) and that a proportion of the dwellings are built to accessible and adaptable standards (20).
41. In the interests the living conditions of future occupiers of the development and highway safety, a condition is necessary to ensure the provision of a scheme for the storage and collection of refuse and recycling (21).

Conclusion

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

S Leonard

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan P1-01 Rev B; Proposed Site Plan P1-04 Rev D; Proposed Floor Plans P2-01; Proposed Elevations P3-01; and Proposed Garage Plans and Elevations P3-02 Rev B.
- 3) No development shall take place above slab level until samples of all external facing and roofing materials in respect of the buildings hereby permitted have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved sample details.
- 4) No development shall take place above slab level until samples of the materials to be used for hard surfacing have been submitted to, and approved in writing by, the local planning authority. The approved hard surfacing shall be completed before the dwellings hereby permitted are first occupied and maintained thereafter.
- 5) No development shall take place above slab level until details of the screen walls/fences/hedges in respect of the boundaries of the dwellings hereby permitted have been submitted to, and approved in writing by, the local planning authority. The screen walls/fences/hedges shall be erected or planted before the dwellings hereby permitted are first occupied and shall subsequently be maintained. Any trees or plants which, within a period of 5 years from the date of the planting, 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) No development shall take place above slab level until there shall have been submitted to, and approved in writing by, the local planning authority, a scheme of landscaping for areas outside of the private residential curtilages of the dwellings hereby permitted. The scheme shall specify species, planting sizes, spacing and numbers of trees/shrubs to be planted (including replacement trees where appropriate) and a maintenance programme detailing all operations to be carried out in order to allow successful establishment of the proposed planting.
- 7) 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 date of planting, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 8) Tree protection measures, including fencing, ground protection, supervision, working procedures and special engineering solutions shall be carried out in accordance with the Arboricultural Impact Assessment by SJ Stephens Associates, Ref 1452 dated 29 April 2020.

- 9) The development shall be undertaken in accordance with the recommendations and procedures contained within Chapter 5 Impacts and Mitigation of the Ecological Assessment by Pro Vision dated May 2020.
- 10) Prior to the commencement of development, there shall have been submitted to, and approved in writing by, the local planning authority, a Biodiversity Management Plan. This shall include:
- Details of the habitats/conservation features to be retained/created/enhanced;
 - The methodology to be used to create the habitat/features;
 - Details of the long-term management proposed for the establishment and maintenance of the habitat/features;
 - Future ecological monitoring of the habitat/features.

The development hereby permitted shall be carried out in accordance with the approved details.

- 11) The dwellings hereby permitted shall not be occupied until a lighting design strategy for biodiversity for the development has been submitted to, and approved in writing by, the local planning authority. The strategy shall:
- Identify those areas/features on site that are particularly sensitive for bats and barn owls and that are likely to cause disturbance along routes used to access key areas of their territory, such as for foraging; and
 - Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats and/or barn owls using their territory.
- 12) No deliveries of construction materials or plant and machinery and no removal of any spoil from the site shall take place before the hours of 0730 nor after 1800 Monday to Friday, before the hours of 0800 nor after 1300 Saturdays nor on Sundays or recognised public holidays.
- 13) No work relating to the construction of the development hereby permitted, including works of demolition or preparation prior to operations, or fitting out, shall take place before the hours of 0730 nor after 1800 Monday to Friday, before the hours of 0800 nor after 1300 Saturdays nor on Sundays or recognised public holidays.
- 14) No development shall take place on site until a measured survey of the site has been undertaken and a plan prepared to a scale of not less than 1:500 showing details of existing and intended final ground levels and finished floor levels in relation to a nearby datum point, which shall be submitted to, and approved by the local planning authority. The development shall be completed and thereafter maintained in accordance with the approved details.
- 15) All en-suite and bathroom windows within the dwellings hereby permitted shall be glazed with obscured glass to at least the equivalent of Pilkington

level 4 standard. The windows and glazing shall be installed prior to the first occupation of the development and shall permanently be maintained in that condition.

- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development as defined within Part 1 of Schedule 2, Classes A, B, C, D and E of that Order, shall be constructed on the site.
- 17) The areas shown on the approved plans for the parking and manoeuvring of vehicles for each plot shall be provided prior to the occupation of the respective dwellings hereby permitted and shall be reserved for these purposes at all times.
- 18) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The submitted details shall be informed by details of infiltration testing in accordance with the BRE365 requirements, and an assessment of flow paths to show how water would flow and pond around the site, both pre- and post-development, and shall include details in respect of its management and maintenance for the lifetime of the development.
- 19) The development hereby permitted shall be carried out in accordance with the Water Efficiency Calculations to Satisfy 17.K Compliance (Part G) by Darren Evans dated 6 August 2020 detailing how the dwellings hereby permitted shall meet a water efficiency standard of 110 litres or less per person per day.
- 20) A minimum of one of the dwellings hereby permitted shall be built to accessible and adaptable standards to enable people to stay in their homes as their needs change. No development shall take place above slab level until details of which property is to be built to such standards are submitted to, and approved by, the local planning authority. The development hereby permitted shall be carried out in accordance with the approved details and retained as such in perpetuity.
- 21) The dwellings hereby permitted shall not be occupied until refuse and recycling storage (prior to disposal) plus a collection point not more than 15 metres carrying distance from a highway which is a carriageway, have been provided within the curtilage of the site for one 240ltr refuse Wheelie bin, one 240ltr recycling Wheelie bin and one glass recycling box. The areas of land so provided shall not be used for any purposes other than the storage (prior to disposal) or the collection of refuse and recycling and shall be thereafter maintained.

*****End of Conditions*****