
Appeal Decision

Site Visit made on 8 June 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2021

Appeal Ref: APP/A1720/W/20/3262221

50 Paxton Road, Fareham, PO14 1AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Bell (Shoreland) against the decision of Fareham Borough Council.
 - The application Ref P/20/0654/OA, dated 2 July 2020, was refused by notice dated 25 September 2020.
 - The development proposed is described as an outline application for 2 x 3-bed dwellings to the rear of 50-52 Paxton Road.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline form with all matters reserved for future approval. Although the 'Coloured Site Layout' drawing is not marked as 'indicative' or 'illustrative', the Design and Access Statement (DAS) describes the layout as a 'sketch'. This was confirmed with the appeal. I am satisfied therefore that, other than the point of access to the site from the highway as indicated on the layout drawing, layout is a matter reserved for future consideration should outline planning permission be granted. The DAS also clarifies that the dwellings are proposed to be chalet bungalows.
3. The address in the banner heading above is taken from the application form although the original application drawings showed the application site as the land to the rear of Nos 50 and 52 Paxton Road and an access between them. During the course of the application the application site was amended to include both Nos 50 and 52 Paxton Road. I have determined this appeal on the basis of these three considerations.
4. The results of the 2020 Housing Delivery Test were published on 19 January 2021. The measurement for the Council is 79% of its housing requirement over the preceding three years. The main parties have had the opportunity to comment on this and I have had regard to their comments in my decision. I return to this matter below.
5. The appeal site lies within 5.6 km of the Solent designated habitats sites¹. Parts c) and d) of the reason for refusal related to the failure to provide appropriate mitigation against the likely significant effects of the proposals on

¹ Solent and Southampton Water SPA and Ramsar Site, Solent and Dorset Coast SPA, Portsmouth Harbour SPA and Ramsar Site and the Solent Maritime SAC.

the integrity of the Solent Waters Special Protection Areas (SPAs) from nutrient discharge and recreational disturbance. Following the refusal of the application the appellant has made the relevant contribution towards mitigation for recreational disturbance. The Council has confirmed that this contribution addresses part d) of the reason for refusal and that it therefore withdraws this part of the reason. I also return to this matter below.

Main Issues

6. The main issues are the effect of the proposals on:

- i) the character and appearance of the area;
- ii) the integrity of the Solent Waters Special Protection Areas;
- iii) the living conditions of the occupiers of neighbouring dwellings, with particular regard to traffic movements past No 52 Paxton Road; and
- iv) the safe and convenient use of the highway, with particular regard to parking.

Reasons

Character and appearance

- 7. Paxton Road is a mature residential area comprising dwellings of varying ages and designs, including detached, semi-detached and terraced properties. Nos 48 and 50 Paxton Road are single-storey bungalows and No 91 Paxton Road is a chalet bungalow, but the majority of the dwellings are 2-storey. Whilst there are some shallower plots in the vicinity of the appeal site, dwellings on Paxton Road are set predominantly in long narrow plots, resulting in a generally consistent pattern of development along the street. These long plots result in a characteristic openness to the rear of the properties on Paxton Road, Redlands Lane and No 3 Avenue Road.
- 8. The land to the rear of Nos 50 and 52 appears to have formerly been part of their rear gardens, although at the time of my site visit the site was bounded by close boarded fencing to all sides. Whilst layout and scale are reserved matters, the size of the site indicates that the gardens of the proposed dwellings could be comparable to those of No 3 Avenue Road and No 48 Paxton Road. However, the size of the site would mean that the plots for the two dwellings proposed, and the remaining plots for Nos 50 and 52, would be substantially smaller than the majority of other plots in the vicinity.
- 9. In this respect, the proposals would not accord with the guidance in the Council's Design Guidance Supplementary Planning Document (SPD). The appellant calculates that the density of the proposed dwellings and Nos 50 and 52 would be higher than the existing density of dwellings in the locality of the appeal site; a result of the smaller plots.
- 10. Even as chalet bungalows the proposed dwellings would be visible from Avenue Road eroding the characteristic spaciousness of the back garden area. From my observations during my site visit, backland development is not characteristic of the locality. Although the appellant draws my attention to three approved schemes for backland development in the Borough, no indication has been given that these are comparable developments within the vicinity of the appeal site.

11. The sketch layout indicates that it would be possible to provide four parking spaces and a turning space on the site, with the parking spaces immediately to the front of the proposed dwellings. This would result in a large area of hardstanding dominating the frontages with little scope for planting to provide relief. This is a further demonstration of the constrained nature of the site.
12. These factors lead me to the conclusion that although there is physically sufficient room on the site to accommodate two dwellings with adequately-sized private gardens and parking spaces, the development as a whole would be at odds with the prevailing pattern of development in the locality.
13. I therefore conclude that it would be harmful to the character and appearance of the area. Accordingly, in this respect, the proposals would be contrary to Policy CS17 of the Fareham Borough Core Strategy (2011) (the Core Strategy) which requires high quality design that responds positively to the key characteristics of the area, including spaciousness.

The Solent Waters SPAs

14. The mudflats, shingle and saltmarshes of the Solent Waters SPAs provide essential feeding and roosting grounds for an assemblage of internationally important numbers of water birds which together comprise the qualifying features of the SPAs. The conservation objectives for each of the SPAs are to ensure that the integrity of the site is maintained and restored in order to protect the habitats and the birds that depend on them.
15. Increased recreation associated with new housing within a 5.6 km straight line distance of the SPAs has the potential to cause more disturbance to the birds, thus threatening their survival. Furthermore, Natural England (NE) has identified that there is a likely significant effect on the SPAs due to the increase in wastewater discharge to the Solent from new developments coming forward². These levels are causing eutrophication of the SPAs which impacts on their important bird species.
16. The appeal property is within 5.6 km of the Solent Waters SPAs. The occupation of the proposed dwellings would be likely to result in additional recreational activity and wastewater. When considered in combination with other projects, these are likely to have a significant effect on the integrity of the SPAs. In such circumstances the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require a decision maker to undertake an appropriate assessment (AA) before granting permission. In doing so, I can consider whether or not mitigation could reduce any adverse effects on the protected areas.
17. The Solent Recreation Mitigation Strategy (2017) (the SRMS) provides a strategic solution to ensure that the requirements of the Habitats Regulations with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development are met through mitigation measures. The Strategic Access Management and Monitoring mitigation measures include a team of rangers to help coastal visitors and communities understand the importance of the different bird species and the impact of disturbance. The measures are funded by contributions from all new residential dwellings within 5.6 km of the Solent Waters SPAs.

² Advice on Achieving Nutrient Neutrality for New Development in the Solent Region (Version 5 June 2020).

18. I am satisfied that these measures are appropriate for the mitigation of the likely significant recreational effects on the Solent Waters SPAs and that contributions toward the measures are necessary to make the development acceptable in planning terms. Given the Council's confirmation I consider that the appellant's financial contribution in this respect would provide for adequate mitigation for the recreational pressure arising from the proposals.
19. As regards nutrients, the Council has not adopted a mitigation strategy but its 'Position Statement on the effects of new residential development upon the Solent' explains that a number of mitigation schemes are coming forward. The appellant registered an interest with the Hampshire and Isle of Wight Wildlife Trust Nutrient Neutrality Scheme prior to the determination of the application.
20. However, whilst this may have been in accordance with the advice of the case officer, this expression of interest represents neither a contribution towards mitigation for the nutrient discharge from the proposed development nor a binding commitment to such a contribution. The appellant has confirmed discussions with the Wildlife Trust over the purchase of 'credits' under the scheme but this has not yet been made and there is some uncertainty over the timescales for making the purchase³. Consequently, at this point in time, I have no mechanism before me to secure the purchase of these credits and nothing to give me certainty that the mitigation would be effective.
21. In accordance with Regulation 70 (3) of the Habitats Regulations outline planning permission must not be granted unless the competent authority is satisfied that no development likely to adversely affect the integrity of a designated site could be carried out under the permission. Planning obligations or potentially conditions can be used to avoid adverse effects. The appellant has indicated a willingness to make the requisite contribution at the reserved matters stage were outline permission to be granted if not before but I have no planning obligation before me in this respect.
22. The appellant has suggested a condition attached to an outline permission. However, the Planning Practice Guidance advises that no payment of money or other consideration can be positively required when granting planning permission. The Guidance also advises that a negatively-worded condition requiring the applicant to enter into a planning obligation is unlikely to be appropriate in the majority of cases.
23. Such a condition may be appropriate in exceptional circumstances where there is clear evidence that the delivery of the development would be at serious risk, for example, in the case of particularly complex development schemes. However, I have no evidence that this is applicable to this proposal. A condition requiring a planning obligation would therefore not be appropriate, in my view, in the circumstances of this appeal.
24. I therefore find that I have no suitable means of securing an appropriate contribution towards mitigation measures for the effects of nutrient discharge from the proposed development on the Solent Waters SPAs before me. Consequently, I cannot be confident that adequate mitigation for these nutrient effects has been or will be secured. I therefore conclude that the

³ Email dated 8 July 2021

proposed development is likely to have an in-combination adverse effect on the integrity of the Solent designated habitats sites.

25. Accordingly, in this respect, the proposed development conflicts with the Habitats Regulations, Policy CS4 of the Core Strategy and Policy DSP13 of the Local Plan. These policies protect designated habitats sites. The proposals do not conflict with Policy DSP15 of the Fareham Borough Local Plan Part 2: Development Sites and Policies (2015) (the Local Plan) which relates to recreational impacts associated with new development on the Solent Waters SPAs given the appellant's contribution towards mitigation in this respect.

Living conditions

26. The Design Guidance SPD sets out that first floor windows in new dwellings in existing streets should be at least 11 m from the boundaries they look towards and no less than 22 m from facing windows in neighbouring houses. However, the Design Guidance sets no standards for new backland dwellings, only that they must be carefully designed to preserve the outlook and privacy available to existing properties.
27. Appearance is a matter for future approval and I see no reason why it would not be possible to have windows in the rear roof slopes of the proposed dwellings facing away from Nos 50, 52 and 54 Paxton Road. These would be at a significant distance from Nos 30 and 32 Redlands Lane and separated by existing garages and a parking / turning area. Although this would be a matter for consideration at the reserved matters stage, I am persuaded that adequate natural light and outlook could be provided for the upper storey rooms in the proposed dwellings without unacceptable overlooking and consequent loss of privacy for the occupiers of dwellings fronting Paxton Road or Redlands Lane.
28. The vehicular access to the site is indicated to be via a driveway off Paxton Road between Nos 50 and 52. No 52 is a narrow detached dwelling, with its main entrance and two ground floor windows to the side facing the driveway serving a dining room and kitchen. The Design Guidance SPD sets out that sufficient distance needs to be left between new driveways and windows to living areas in adjacent properties. The driveway would be approximately 1.5 m from these habitable room windows.
29. The use of this indicated access would cause some disturbance to the occupiers of No 52, but I have no evidence that the occupation of two dwellings would result in excessive vehicle movements. These movements would be likely to be sporadic throughout the day rather than continual. Access and landscaping are reserved for future approval and could include surfacing and boundary treatment or planting to mitigate noise impacts and provide privacy. Any disturbance would thus be limited.
30. I therefore conclude that the proposed development would not cause unacceptable harm to the living conditions of the occupiers of Nos 50, 52 or 54 with regard to overlooking of these properties or disturbance to the occupiers of No 52. Accordingly, in these respects, the proposals would not conflict with Policies DSP2 or DSP3 of the Local Plan which protect neighbouring properties from pollution and the living conditions of their occupiers.

Highway safety and convenience

31. The Council's Residential Car & Cycle Parking Standards SPD sets out a standard for 2 to 3-bedroom dwellings of 2 off-street spaces. The sketch layout indicates that it would be possible to provide 2 spaces for each of the proposed dwellings which would comply with the SPD. No 52 would have only one parking space but the appellant contends that this is the current level of provision, which is not disputed by the Council. Accordingly, the proposed development would not exacerbate this existing shortfall in parking provision.
32. Furthermore, subject to detailed consideration at the reserved matters stage were outline permission to be granted, the parking space for No 52 could be accessed off the proposed drive, thus freeing up an on-street space in front of No 50. In any event, the appeal site is within reasonable walking distance of the town centre with a wide range of facilities and services, including public transport. It is therefore in a highly accessible area where the Parking Standards SPD allows for a reduction in the standards.
33. Whilst on-street parking in the vicinity of the appeal site is restricted and noting the concerns of local residents over parking, I am thus not persuaded that the proposed development would result in an increased demand for on-street parking.
34. I therefore conclude that the proposed development would not have an unacceptable effect on the safe and convenient use of the highway. Accordingly, in this respect, I find no conflict with Policy CS17 of the Core Strategy which requires development to provide appropriate parking for intended uses.

Other Matters

35. I note that the Council refused the application before the expiry of the agreed extension of time for determination. However, this relates to the application process rather than the merits of the proposed development and I have therefore given this very little weight in my determination.

Planning Balance

36. The Council is unable to demonstrate a 5-year supply of deliverable housing sites and has confirmed that the supply as at February 2021 was 4.2 years⁴. The shortfall is therefore moderate. In these circumstances, paragraph 11 d) of the National Planning Policy Framework (the Framework) is engaged by footnote 7. Nevertheless, as Policies CS17 and CS4 of the Core Strategy and Policy DSP13 of the Local Plan are broadly consistent with the Framework's policies on character and biodiversity, the conflict with the development plan attracts significant weight in this case.
37. Paragraph 11 d) i) sets out that planning permission should be granted unless the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 confirms that these policies include those relating to habitats sites.

⁴ Email dated 7 July 2021

38. I have found that the proposed development would be likely to adversely affect the integrity of the Solent Waters SPAs, which provides a clear reason for refusing the proposed development. Consequently, and in accordance with paragraph 177 of the Framework, although the development would contribute to the housing supply in the Borough as a windfall site, the presumption in favour of sustainable development does not apply in this case.

Conclusion

39. I have found above that the proposed development would conflict with the development plan taken as a whole. There are no considerations, including the policies of the Framework, that indicate that a decision should be taken other than in accordance with the development plan.
40. For this reason, and having regard to the other matter raised, the appeal is dismissed.

Martin Small

INSPECTOR