
Appeal Decision

Site visit made on 10 May 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2021

Appeal Ref: APP/L1765/W/20/3254522

Gubblecotes, Boyes Lane, Colden Common SO21 1TA

- 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 Nick Plowright against the decision of Winchester City Council.
 - The application Ref 19/02720/FUL, dated 5 December 2019, was refused by notice dated 6 April 2020.
 - The development proposed is demolition of triple garage and subdivision of plot to create one wheelchair accessible dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of triple garage and subdivision of plot to create one wheelchair accessible dwelling at Gubblecotes, Boyes Lane, Colden Common SO21 1TA in accordance with the terms of the application, Ref 19/02720/FUL, dated 5 December 2019, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The Council has advised that, following receipt of additional information, it is no longer seeking to defend the third refusal reason in relation to the effect of the proposal on European protected sites. I shall return to this later in my decision.

Main Issues

3. The main issues are:
 - a) whether the proposal would comply with development plan policy on the location of new housing;
 - b) the effect of the proposal on the character and appearance of the area; and
 - c) whether there are material considerations to outweigh any policy conflicts identified in relation to the above matters.

Reasons

Development plan policy on the location of new housing

4. The property known as 'Gubblecotes' lies immediately adjacent to the settlement boundary of Colden Common, as defined on the Policies Map for the Winchester District Local Plan Part 2 – Development Management and Site

Allocations (2017) (LPP2). The Policies Map annotates the land as countryside where Policy MTRA4 of the Winchester District Local Plan Part 1 – Joint Core Strategy (2013) (JCS) restricts new-build residential development to that which has an operational need to be located in the countryside. This policy is consistent with the National Planning Policy Framework (the Framework) in recognising the intrinsic character and beauty of the countryside.

5. As a matter of fact, the proposal would be contrary to JCS Policy MTRA4. In exercise of Section 38(6) of the Planning and Compulsory Purchase Act 2004, a grant of planning permission would only be appropriate where material considerations exist to justify a decision otherwise than in accordance with the development plan.

Character and appearance

6. Boyes Lane extends from the B3354 eastwards towards Colden Common Park and Tanglewood Equestrian Centre. It also serves a handful of dwellings, including the appeal property. The first section of lane runs adjacent to a recent housing development at Dunfords Ride. The boundary landscaping for that scheme is of high quality and maintains a strong rural character within the lane.
7. The lane continues past Gubblecotes and another dwelling known as The Shires. These properties were built at a lower density than the Dunfords Ride development, occupying larger plots. Nevertheless, they have urban boundary treatments onto the lane and visually relate more closely to the built-up area than the countryside. In my opinion, the countryside begins to the south of the lane and beyond The Shires where the views open out across paddocks.
8. The proposed dwelling would replace an existing detached triple garage with pitched roof. It would be enclosed by Gubblecotes itself to the east, the housing within the settlement boundary to the west, woodland to the north and a high wall to the road frontage. The dwelling would be of similar height to its neighbours and of broadly comparable design. It would fit comfortably onto the site without appearing cramped. To the average passer-by, this would read as infill development and it would be wholly unsurprising.
9. The Council alleges that there would be encroachment of the built-up settlement into the countryside. The Oxford English Dictionary definition of 'encroach' is to intrude on or to 'advance gradually beyond usual or acceptable limits'. The proposal would do neither; it would simply replace a large domestic outbuilding between one dwelling and another. The settlement would not be extended and there would be no loss of countryside, or visual intrusion into the landscape setting of Colden Common. The new dwelling would be experienced in the context of existing built form, the enclosed nature of the site preventing all but localised public views from Boyes Lane.
10. Accordingly, I conclude on this issue that there would be no material harm to the character and appearance of the area. The proposal would comply with LPP2 Policies DM15 and DM23 insofar as these seek to protect the rural character of the area and ensure that new development respects the qualities, features and characteristics that contribute to local distinctiveness.

Other material considerations

11. Policy DM2 of the LPP2 requires affordable dwellings to be constructed, where practical and viable, to Part M4 Category 2 of the Building Regulations. These

standards relate to accessible and adaptable dwellings. The supporting text to the policy sets out the Council's aim to secure Part M4 (2) dwellings as part of market housing development, together with a small number of wheelchair user dwellings as specified under Part M4 (3), depending on local needs. However, this relies on negotiation with developers on a case-by-case basis and there is no means of requiring the developers of market housing to meet these optional higher standards.

12. The Council advises that all of the 68 affordable dwellings at the Sandyfields site in Colden Common are being built to Part M4 (2). Although it argues that the need for accessible homes is likely to be more acute in the affordable sector, this is not supported with any firm evidence. Owner occupiers may have the resources to adapt existing market homes, but equally they may not. The probability is that they would not be eligible (or at least a priority) to be allocated an affordable home, neither would it be fair to expect them to move to affordable housing as they become older and frailer.
13. The latest Strategic Housing Market Assessment, which will feed into the preparation of the next local plan, provides strong evidence to support the view that additional wheelchair accessible housing will be required to meet the needs of an ageing population. The aspiration for a proportion of market homes to be wheelchair accessible is already set out within the development plan, even if the policy lacks teeth.
14. The planning application is accompanied by a unilateral undertaking¹ (UU) which secures the construction of the proposed dwelling to the Part M4 (3) standard. This would make a small, but useful contribution to the stock of wheelchair accessible homes in the District and I have attached it some positive weight in the planning balance, even though there is no indication that the appellant is a wheelchair user at present. The proposal would 'future-proof' the appellant's home into old age and meet the needs of subsequent occupiers.
15. Under section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Within this context, the Framework requires plan-makers to assess the demand from people wishing to commission or build their own homes. There is no explicit requirement for a policy on self-build, but the expectation is that policies should reflect the needs of different groups in the community.
16. The register for Winchester is split into two parts: Part 1 includes those individuals or associations who meet all the eligibility criteria, whereas Part 2 includes those who meet all the criteria except for a local connection test. There is a legal obligation to grant planning permissions to meet the demand under Part 1, within 3 years of the end of each base period. The Council states that 140 CIL² exempt permissions have been granted to date and that this is sufficient to meet the demand for base periods³ 1 and 2 which amounts to 88 sites. However, I note that 114 persons have been removed from the register

¹ Dated 18th June 2020

² Self-builders can claim an exemption from Community Infrastructure Levy

³ Ending 30 October 2016 and 30 October 2017 respectively

after multiple attempts to make contact; the Council has assumed that these individuals are no longer interested in finding a self-build site.

17. The limited information presented gives me some confidence that provision is being made for self-build homes. However, it falls short of the robust evidence needed to demonstrate full compliance with the legal duty. Whilst the Council has a pool of sites on its brownfield register which are potentially suitable for self-build, there can be no guarantees that such sites will come forward for that purpose. The UU secures the proposed dwelling as a self-build property and this commitment can be afforded some positive weight in the planning balance.
18. The Council has provided an appeal decision⁴ for a site elsewhere in the District in which the benefits of self-build/custom-build housing were attributed neutral weight. I have not had sight of the full evidence presented to that Inspector in relation to the ability of the Council to meet its legal obligations, but in any event it is clear that the appeal turned on character and appearance issues. The current appeal is not comparable in that there would be no material planning harm. As such, the cases can be distinguished from one another.

Appropriate Assessment

19. The site lies within the zone of influence of the Solent Special Protection Areas which are at risk from eutrophication, caused by nutrients entering the water as a result of agricultural processes and sewage effluent. Having taken advice from Natural England, the Council was initially concerned that the proposed dwelling would, in combination with other plans and projects, have a likely significant effect on European sites.
20. Subsequent to the decision, further information was submitted about the efficiency of the proposed package treatment plant (PTP) together with an undertaking to replace the sewage system serving the existing house with the same type of PTP. The accompanying analysis applies the methodology for package treatment plants set out in Table 6 of Natural England's advice note for achieving nutrient neutrality for new developments in the Solent region (March 2020). The net overall improvement would ensure the neutrality of the development in terms of its impact on the Solent water environment.
21. Based on the evidence before me, and acting as competent authority for the purposes of Appropriate Assessment, I am satisfied that the proposal would not adversely affect the integrity of the European sites. This conclusion is subject to the imposition of conditions to require the installation of the PTPs for both existing and proposed dwellings, and measures to ensure that water consumption does not exceed 110 litres per person per day.

Planning Balance

22. The Framework makes clear that the planning system should be genuinely plan-led. Where an application conflicts with an up-to-date development plan, permission should not usually be granted. Whilst in this case there is a clear conflict with JCS Policy MTRA4, there is no conflict with its underlying purpose to protect the intrinsic character and beauty of the countryside, or the objective to ensure that the future occupiers of new housing have access to services and facilities without undue reliance on the private car.

⁴ APP/L1765/W/19/3233660

23. The appeal site is within walking distance of, amongst other things, a primary school, community centre, doctors surgery, pharmacy, shop and public house. Nearby bus stops facilitate access by public transport to Winchester and other higher order settlements. This site is no less sustainable in locational terms than the Council's allocated site at Sandyfields.
24. I have given weight to the fact that the scheme would deliver a wheelchair accessible dwelling and a self-build home. Although the benefits of a single residential unit would be very modest, they are nevertheless positive in the planning balance. Having regard to the absence of character and appearance harm and the good accessibility to services and facilities, I find that there are material considerations sufficient to outweigh the policy objection arising from the site's location outside of the settlement boundary.
25. The appellant has not challenged the Council's assertion that it is able to demonstrate a 5 year supply of deliverable housing sites. The most recent annual monitoring report shows that the authority has a 6.7 year supply. The Government's Housing Delivery Test further indicates that Winchester delivered 129% of its housing requirement over the last 3 years. Whilst this is a healthy position, it does not represent a ceiling to housing delivery. The proposal would contribute to the Framework objective of significantly boosting the supply of homes and in my opinion it constitutes sustainable development. As such, I consider that there are no justifiable grounds for dismissing the appeal.

Conditions

26. In addition to the conditions referenced in my Appropriate Assessment above, I have attached a condition to specify the approved plans, in the interests of certainty. To ensure that the development does not harm nearby Sites of Importance for Nature Conservation, a condition is necessary to ensure that a Construction Environmental Management Plan is submitted and approved before any development takes place.
27. A pre-commencement condition is also needed to secure details of surface and foul water drainage, which shall include the installation of the PTPs. Further conditions are required in relation to details of sustainable construction, to meet the requirements of JCS Policy CP11.
28. In the interests of protecting and enhancing biodiversity a condition is needed to ensure compliance with the recommendations of the submitted ecological appraisal. Finally, a condition requiring the Council's approval of external materials is needed to ensure that the development respects the character and appearance of the area. For flexibility, and to minimise the number of pre-commencement conditions, I have amended the wording of this condition to enable groundworks to take place before the materials are approved.

Conclusion

29. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development shall be in accordance with the following plans: Drawing nos. 19013-A-PL-101 rev B, 19013-A-PL-102 rev A, 19009-A-PL-110 rev A, 19009-A-PL-111 rev A, 19009-A-PL-112 rev A and 19009-A-PL-115 rev A.
- 3) No development shall commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until detailed information (in the form of SAP design stage data) demonstrating that the dwelling meets the Code 4 standard for energy (as defined by the ENE1 and ENE2 in the Code for Sustainable Homes) and the Code 4 standard for water (in the form of a BRE water calculator with a maximum standard of 110 litres/day) has been submitted to and approved in writing by the local planning authority. The development shall be built in accordance with the approved details.
- 5) No development shall commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to and approved in writing by the local planning authority. The details shall include the Package Treatment Plants to be installed for both the existing and proposed dwellings in accordance with the information submitted in the revised nitrates report. The foul sewage system shall thereafter be monitored and maintained in accordance with the plan prepared by The Civil Engineering Practice and dated 7th August 2020.
- 6) No development shall take place above ground level until details and samples of the materials to be used in the construction of the external walls and roofs of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) The dwelling hereby permitted shall not be occupied until detailed information (in the form of SAP as built stage data) demonstrating that the home meets the Code 4 standard for energy (as defined by the ENE1 and ENE2 in the Code for Sustainable Homes) has been submitted to and approved in writing by the local planning authority.
- 8) The dwelling hereby permitted shall not be occupied until water efficiency calculations have been submitted to and approved in writing by the local planning authority. The calculations shall demonstrate that the existing and proposed dwellings on the site will achieve a maximum consumption of no more than 110 litres of water per person per day. The approved water efficiency measures shall be implemented prior to the development being first occupied and thereafter maintained.

- 9) The recommendations and requirements of the Ecosupport Ecological Appraisal dated December 2019, to be updated if required, shall be adhered to throughout all phases of the development and the ecological enhancement measures shall be thereafter maintained in perpetuity.

*** END ***