



Appeal Decision

Site visit made on 3 August 2021

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2021

Appeal Ref: APP/W1715/W/20/3265838

Land to the south of Maddoxford Lane, Boorley Green, Botley SO32 2DB

- 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 Bloor Homes against the decision of Eastleigh Borough Council.
 - The application F/19/85178, dated 1 March 2019, was refused by notice dated 9 November 2020.
 - The development proposed is the construction of 92 dwellings; the creation of new vehicular access with footways from Maddoxford Lane; provision of informal and formal open space, together with associated highways, landscape, and earth works and level changes, foul and surface water drainage facilities, utilities provision and other associated and necessary infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was originally submitted for 104 dwellings but amended during the course of the application to a scheme of 92 dwellings. Although the appeal form indicates that the description has not changed from the application form, it is clear from the appellant's statement that it has, submission of the revised scheme was agreed by the appellant and Council, and the application determined by the Council on that basis. The description was also amended to clarify that the footways extend from Maddoxford Lane. I have therefore considered the appeal based on the amended scheme of 92 dwellings and associated works.
3. The appellant submitted an amended site layout plan after the Council's decision¹. This seeks to address a reason for refusal about garden and parking space. The amendments are relatively modest and internal to the site. The Council has had the opportunity to comment on the amendments and there would be no appreciable effect on other interested parties outside the site. Having regard to the principles in the *Wheatcroft* judgement², I consider it is reasonable for me to take the amended plans into account in reaching my decision.
4. The Council recently consulted on main modifications to the emerging Eastleigh Borough Local Plan 2016-2036 (the 'draft Local Plan') between 9 June and 21 July 2021. The modifications are ones that are likely to be necessary to make

¹ BLOO180133/SL01 Rev N

² *Bernard Wheatcroft Ltd v SSE* [JPL 1982 p37]

the draft plan sound. I comment further on the emerging draft Local Plan in my reasoning and the planning balance.

5. A signed and dated unilateral undertaking has been submitted by the appellant, which would secure a range of planning benefits. I consider this undertaking in more detail under the fourth main issue.
6. During the course of the appeal, the National Planning Policy Framework (the 'Framework') was revised. Both main parties were given an opportunity to comment on the revised version in so far as those revisions are material to the appeal.

Main Issues

7. The main issues are:

- whether the proposal accords with policies for the location of development and its effect on the character and appearance of the countryside,
- the design and layout of the proposal,
- the living conditions of future residents with respect to noise from a neighbouring use, and
- the provision of infrastructure.

8. It is also necessary to consider whether the policies which are most important for determining the proposal are out of date, and consequently whether paragraph 11 of the Framework is engaged. I address this matter in the planning balance.

Reasons

Location of development and countryside character

9. The site lies outside the urban area boundary within an area classified as countryside on the current Proposals Map. Policy 1.CO of the Eastleigh Borough Local Plan 2001-2011 (the 'Local Plan') states that planning permission will not be granted for development outside the urban edge unless the development falls within any of 4 criteria. The appeal proposal does not fall within any of those criteria, and therefore conflicts with Policy 1.CO, which seeks to protect and enhance the countryside.
10. The emerging draft Local Plan seeks to identify and plan for new development, in particular housing, to meet current and future housing demand. The western part of the appeal site is allocated for residential development under draft Policy BO1 and as shown on the draft Policies Map, but the eastern part is not. Draft Policy S3 supports residential development on the allocated part of the site, while draft Policy S7 resists new development in the countryside other than as identified in criteria, none of which are applicable to the appeal proposal. The eastern part of the proposed development would therefore conflict with draft Policy S1, which sets out the overall approach to development, and draft Policy S7, which restricts development in the countryside principally to maintain its rural character and to limit urbanisation.
11. The character of the countryside in the vicinity of the appeal site is of mainly pasture fields separated by well-established hedges and trees. Maddoxford

Lane is characteristic of a country lane being narrow, without footways or lighting and bounded on both sides by field hedges. To the east lie scattered farmsteads and beyond them the valley of the River Hamble. To the north and west of the western part of the appeal site, permission has been granted for residential development, part of which has been built out with work beginning on later phases.

12. Development on the site would erode this rural character by introducing built development that would urbanise its appearance through the introduction of buildings, roads, parking and the domestic activities associated with a residential use. The loss of character has been accepted on the western part of the site through its allocation for planned residential development to meet housing need. It would effectively round off the development that has already been granted to the north and west. Its eastern and southern boundaries are well defined with hedges and trees, providing an appropriate edge to the countryside.
13. The same cannot be said for the eastern part of the site. Development on this land would project out from the planned urban area into more open countryside. Buildings and associated works on it would be visible from Maddoxford Lane and in gaps in the surrounding hedges and tree belts. Although the hedge along Maddoxford Lane is shown to be retained, the proximity of new buildings to it and their height above it would make them clearly visible. This development, particularly on plots 62 and 63 and the pumping station, would be closer to the lane than the planned development to the west, the scattered farmsteads to the east, or the proposed development on the western part of the site. It would as a result appear intrusive. Rather than being seen in the context of the planned development as suggested in the appellant's landscape and visual appraisal³, I consider that it would intrude out from the defined edge of what will become the urban area, into undeveloped countryside.
14. I conclude that, because of the development proposed on the eastern part of the site, the proposal would fail to accord with the existing and emerging strategy for the location of new development in the area. Development on the eastern part of the site, including the proximity of development to Maddoxford Lane, would also harm the character and appearance of the countryside. Consequently, the proposal would conflict with Policies 1.CO and 59.BE of the Local Plan and draft Policies S1, S7 and DM1 of the draft Local Plan, which together seek to protect the countryside, limit urbanisation, and take full and proper account of the context of the site.

Design and layout

15. The Council has raised detailed concerns with aspects of the design and layout of the proposed development in relation to the number of parking spaces and layout of parking courts, proximity of development to the northern and southern boundaries, lack of public open space, separation distances between dwellings, garden sizes, the height of some units, lack of architectural detailing including blank walls and in some instances lack of windows and chimneys, inappropriate boundary treatments, and lack of parking and secure cycle storage.

³ FPCR Environment and Design Ltd landscape and visual appraisal, June 2020 and technical note, December 2020

16. The appellant has sought to address some of these concerns in the amended layout plan by making small adjustments to separation distances, garden sizes and the number of parking spaces. These changes overcome in a number of instances the criticisms made by the Council, but there remain issues of concern as set out in the Council's statement of case at paragraphs 9.33-9.73. I note the further comments by the appellant in the response to the Council's statement, including that many of these criticisms were raised for the first time in the Council's statement, and some could be addressed either through further amendments or by conditions.
17. As regards the layout I have already raised concern at the proximity of development to the northern boundary on the eastern part of the site. I note that further landscaping is proposed along this boundary, but the lack of space would prevent any meaningful additional planting or allow large trees to develop to maturity. I also share the Council's Landscape Officer's view that the proximity of the buildings and parking spaces could damage the retention of the hedge along the lane frontage. Conversely, I consider there would be adequate space along the southern boundary, in particular on the western part of the site where there is a well-established hedge and tree belt that would be retained, and where the buildings are shown to be set off from the boundary.
18. In some cases, separation distances are below those recommended in the Council's design guidance. While I accept that this is guidance and not policy, I consider that unless there is good reason, minimum design standards should be achieved in new development, particularly in large schemes such as this where the siting and layout of dwellings is unconstrained by existing development. This also applies to garden sizes and the provision of private amenity space. Most of the outstanding issues around separation and garden sizes are likely to be able to be overcome through further amendments but would be difficult to achieve through the imposition of conditions because of the knock on effects on the overall layout, including possibly the number of dwellings.
19. With regards to parking the amended layout would provide additional spaces for the flats in the south-east corner of the scheme. Although the Council has maintained concern at the lack of parking for flats adjacent to the southern boundary on the western part of the site, this appears to result from a misunderstanding of the size of the units, which are 1-bed. The amended layout plan now meets the minimum parking standards for the scheme overall. Secure cycle storage could be secured through a condition.
20. So far as public open space is concerned, the landscape design of the kickabout area could be reserved by condition to ensure that it would be useable for informal recreation. The lack of an equipped play area could be overcome by a financial contribution towards the upkeep of an alternative play area nearby. The provision of public open space in the development is therefore acceptable.
21. Criticism is also raised at the number and design of the parking courts in front of the flats and some of the dwellings. While I understand that these would lead to car dominated frontages, they would now all be separated from their respective dwellings by landscaped strips, which would enable a degree of planting to soften the extent of hard surfacing. The parking courts have been used reasonably sparingly as a means of providing parking spaces, particularly on the western part of the site, where the majority of parking spaces are

screened between buildings rather than in front of them. Parking courts are also used to some extent in the residential developments currently being built to the north and west. Taking these factors together, I do not consider the parking layout would cause harm to the appearance of the overall scheme.

22. In terms of building design, the criticisms relating to the absence of windows, architectural detailing and provision of different means of boundary treatment, whether that be by brick walls or hedging, could be addressed through the imposition of conditions where appropriate. So far as the height of dwellings is concerned, I see no objection in principle to the use of 2½ storey dwellings in parts of the development as they add a degree of variation in building height and the design of the dormer windows are in scale with the roof planes.
23. I conclude that while the general design and layout of the scheme is acceptable, there are detailed failings relating to the proximity of development to the northern boundary on the eastern part of the site, and separation distances and garden sizes of those units detailed in the Council's statement of case as being inadequate. Other shortcomings of building design and boundary treatments could be addressed through the imposition of conditions, but the layout concerns could not because of their impact on other parts of the scheme. To this limited extent, the design and layout of the proposed development would result in a poor environment for future occupants, and would therefore conflict with Policy 59.BE of the Local Plan and draft Policy DM1 of the draft Local Plan, which require high quality design in new development. It would not however conflict with Policy 104.T of the Local Plan or draft Policy DM14 of the draft Local Plan, which relate to parking.

Noise

24. Land at Holly Tree Farm, to the east of the appeal site, has a confirmed lawful mixed use of 'residential, agricultural and for the storage of motor vehicles and motor vehicle body parts and scrap material associated therewith'⁴. The land in question is separated from the appeal site by an area of rough ground, an area laid to grass, and a separate property at Westfield. The storage use appears to have spread on to the area of rough ground⁵ in the past but the land has now been cleared⁶.
25. The appellant has submitted evidence in the form of a noise survey, technical note and legal advice to demonstrate that the existing mixed use including storage of motor vehicles does not cause a noise nuisance at present, and that the potential for it to expand or intensify in the future is limited to the lawful area and use as defined in the enforcement appeal decision in 2001.
26. The Council's Environmental Health Officer agrees that the present use does not result in a noise nuisance and residential development on the site is unlikely to result in complaints that might lead to unreasonable restrictions being placed on the existing motor vehicle storage use. However, concern remains about the potential for the use to intensify in the future, with consequent incompatibility with the proposed residential use of the appeal site.
27. While I understand that concern, the degree to which the use could intensify is limited by the lawfully defined use. This includes storage of motor vehicles,

⁴ Enforcement appeal APP/W1715/C/00/1053214, dated 27 April 2001

⁵ Photomontage on drawing BLOO180133 CSL.01 Rev N

⁶ Bloor Homes technical note, dated December 2020

motor vehicle parts and associated scrap material but does not include breaking, crushing or processing of vehicles. Noisy activity is therefore likely to be limited to vehicle movements bringing, unloading, loading and departing with motor vehicles rather than any scrap activity on site. It is also limited to the area defined in the enforcement appeal decision, which is separated from the appeal site by intervening land around and to the rear of Holly Tree Farmhouse. I consider that even though there is the potential for the use to intensify lawfully, these limitations place restrictions on that potential to the extent that it would be unlikely to cause significant disturbance to residential dwellings on the appeal site.

28. I conclude that sufficient information has been provided to demonstrate that the lawful use at Holly Tree Farm would not have an adverse effect on the living conditions of occupants on the appeal site. The proposal would not therefore conflict with Policy 30.ES of the Local Plan or draft Policy DM8 of the draft Local Plan, which seek to avoid noise-sensitive development inhibiting existing economic or other activities.

Infrastructure

29. A completed unilateral undertaking has been submitted with the appeal which would secure 32 of the dwellings (35%) as affordable housing, on-site open space, and financial contributions towards off-site local open space, habitat mitigation, primary and secondary education, transport, healthcare and public art provision.
30. The obligations are made subject to them meeting the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. Those tests are that each obligation should be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. The appellant has queried in particular those obligations relating to community facilities, public art, and transport.
31. I am satisfied that the development would place additional demands on the need for community facilities, and that while it is not of a size to require an on-site facility, it is necessary and reasonable for it to contribute to the provision or improvement of community facilities in the local area. Likewise, while the development would not require works to Maddoxford Lane other than as required to directly access the site, future occupants would place additional demands on the highway network and public transport, and it is reasonable that the scheme should contribute towards improvements to these aspects of transport provision in the area.
32. The financial contribution towards public art is more finely balanced but given the policy⁷ and supplementary planning guidance⁸ support for public art projects, acceptance of the need for public art as a planning obligation in development nearby⁹, and the increased emphasis on beauty in the revised Framework and National Design Guide I am persuaded that such an obligation does meet the tests of Regulation 122 and is therefore a legitimate requirement of the development.

⁷ Local Plan Policy 165.TA

⁸ Eastleigh Borough Council: Planning Obligations supplementary planning document

⁹ APP/W1715/W/15/3130073 – Land to the north west of Boorley Green, Winchester Road, Boorley Green

33. The Council has requested the inclusion of a clause in the affordable housing obligation which would require the provision of the land for affordable housing at nil cost in the event that the developer is unable to reach agreement with an affordable housing provider to construct and deliver the affordable houses. As there are other clauses in the obligation that require a contract for the provision of the affordable housing, and their transfer to an affordable housing provider, prior to occupation of set proportions of the market housing I consider this additional clause to be unnecessary.
34. I conclude that all the obligations contained in the unilateral undertaking dated 31 March 2021, including those relating to community facilities, public art and transport, meet the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. Furthermore, collectively they address the fourth reason for refusal on the Council's decision notice in providing the infrastructure or contributions towards infrastructure necessary to make the development acceptable. Subject to the obligations contained in the unilateral undertaking, the proposed development would therefore comply with Policies 25.NC, 74.H, 101.T, 147.OS, 165.TA and 191.IN of the Local Plan and draft Policies DM1, DM13, DM30, DM35 and DM40 of the draft Local Plan in so far as they relate to infrastructure provision.

Other Matters

35. The appeal site lies within the zones of influence of the Solent Maritime Special Area of Conservation, and the Solent and Southampton Water Special Protection Area and Ramsar sites. There is the potential for the proposal to have a significant adverse effect on the ecological value of these sites when taken in combination with other development in the area. While I note that the Council has carried out an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 and the appellant has agreed to mitigation measures, given my overall conclusion on the appeal it has not been necessary for me to carry out my own appropriate assessment.

Planning Balance

36. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires any determination under the planning Acts to be made in accordance with the development plan unless material considerations indicate otherwise.
37. I have concluded that the proposal would conflict with Policies 1.CO and 59.BE of the Local Plan because it would conflict with the strategy for the location of new development, would harm the character and appearance of the countryside, and would to a limited extent result in an unsatisfactory design and layout. Although I have found no conflict with policies relating to parking, noise and the provision of infrastructure, I consider the proposed development would conflict with the development plan when taken as a whole.
38. The current Local Plan is now dated and does not provide sufficient land to meet current housing requirements. In achieving a balance between significantly boosting the supply of homes and safeguarding the countryside the current Local Plan and the policies in it must therefore carry limited weight.
39. However, the emerging Local Plan does seek to address current and future housing demand and does include significant allocations to meet that demand, including the western part of the appeal site, while protecting the remaining

countryside and limiting urbanisation. Importantly the housing allocation under Policy BO1 does not include the eastern part of the site. Residential development of that part of the site would therefore conflict with draft Policies S1, S7 and DM1 of the draft Local Plan. Given the advanced stage the draft Local Plan has reached in its development, I place substantial weight on it and the policies contained within it. I acknowledge that the Local Plan Inspector has yet to consider the consultation responses to the main modifications, but the fact that no main modification is proposed to extend the allocation proposed under Policy BO1 further to the east is significant.

40. Assuming the strategic growth option is deleted as now proposed, the draft Local Plan would under deliver on housing. However, the under delivery would be towards the latter years of the draft Plan and the recommendation of the Local Plan Inspector to carry out an early review would address this shortfall using a plan-led approach rather than through the ad hoc release of sites for housing.
41. While I have concluded that the current Local Plan must be given limited weight because it does not provide sufficient housing, that is not to say that all the policies in it should be discounted. I consider that Policies 1.CO and 59.BE, which seek to protect the countryside and promote good design, are broadly consistent with the Framework¹⁰ and therefore not out-of-date in the sense meant by paragraph 11 of the Framework. Furthermore, there is no dispute that the Council is able to demonstrate a housing land supply in excess of 5 years and has a healthy housing delivery rate of 131%¹¹. I therefore consider that the policies which are most important for determining the appeal are not out-of-date, and the presumption contained in paragraph 11 of the Framework is not triggered.
42. I have been referred to appeal decisions by both main parties, which have assessed the weight to be given to Local Plan policies from 'limited' to 'full', and whether policies are out-of-date for the purposes of paragraph 11 of the Framework. Those decisions which are dated or relate to other local planning authority areas are of limited relevance because different policies and plans are involved. Those more recent and relating to other sites within Eastleigh Borough are more relevant but are reliant on judgements made on the particular circumstances of each case, which inevitably differ from those of this appeal. There is also a distinction to be drawn between a policy being out-of-date, and it carrying varying weight depending on its purpose and the status of the Plan of which it forms part. Consequently, while I have had regard to these other appeal decisions, it is necessary for me to reach a conclusion based on the circumstances of this case and my own judgement.
43. I acknowledge that the proposed development would bring forward benefits. This includes adding an additional 92 dwellings to the housing stock, and a benefit arising from the provision of 32 affordable dwellings. There would also be economic benefits arising during the construction period and in the longer term from increased spending. However, these benefits are limited to the extent that the western part of the site is likely to be allocated for housing with similar benefits in the near future, albeit a reduced number of dwellings compared to the appeal scheme.

¹⁰ Section 12. Achieving well-designed places and Section 15. Conserving and enhancing the natural environment

¹¹ Housing Delivery Test: 2020 measurement

44. Other benefits, such as additional public open space and financial contributions towards off-site infrastructure are necessary to support the new development and are a neutral consideration in the planning balance. The same applies to additional Council tax and the New Homes Bonus. While these would increase public funding, that funding is needed to provide additional public services and facilities to serve the increased population.
45. Taking these matters together, I conclude that the harm caused by the conflict with the development plan, which carries limited weight, and the conflict with the emerging Local Plan, which carries substantial weight, would not be outweighed by other material considerations, including the benefits arising from the scheme. It follows that the appeal must fail.

Conclusion

46. I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR