The Planning Inspectorate

Appeal Decisions

Site visit made on 2 November 2021

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 November 2021

Appeal A: Appeal Ref: APP/K1128/X/20/3252613
Land to the north of Seymour Drive, Dartmouth Easting 286140: Northing 51425

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr David Holloway against South Hams District Council.
- The application (Ref. 0319/20/CL) is dated 23 January 2020.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is private undeveloped land relating to the area edged red on the submitted plan 17006_PL502 in continuous breach of condition 7 and the non-application of conditions 6 and 8 of 15/1790/98/F which required the laying out, landscaping and use as an area of open grassland accessible to the public in the interests of the visual and residential amenities of the locality and to assimilate the development into its surroundings.

Appeal B: Appeal Ref: APP/K1128/W/20/3252623
Land at SX861 514 North of Seymour Drive, Dartmouth

- 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 Holloway against the decision of South Hams District Council.
- The application Ref 2583/19/FUL, dated 9 August 2019, was refused by notice dated 20 November 2019.
- The development proposed is 9 dwellings and associated works.

Decisions

Appeal A: Appeal Ref: APP/K1128/X/20/3252613

1. The appeal is dismissed.

Appeal B: Appeal Ref: APP/K1128/W/20/3252623

2. The appeal is dismissed.

Applications for costs

3. Applications for costs have been made by the appellant against the Council in respect of both appeals. These applications are the subject of separate Decisions.

Appeals A and B: Procedural Matters

4. Both appeals were submitted in mid-May 2020. Very shortly afterwards, the appellant sold the appeal site. Nevertheless, both appeals continue in the name of Mr Holloway.

5. On the planning application form, the address of the site was given only as a grid reference. The address in the banner heading for Appeal B was taken from another source. Both appeals nevertheless concern the same parcel of land. The Appeal B site is slightly smaller in extent than that which is the subject of Appeal A although the excluded strip of tree planting is shown as within the ownership of the appellant.

Appeal A

Background and main issue

6. On 10 February 1999 planning permission (the 1999 permission) was granted for 'construction of 28 dwellings' on an area of land west of Townstal, Dartmouth (Ref: 15/1790/98/F). In effect, this was an extension to the Seymour Drive development. The permission was subject to 10 conditions. Conditions 6, 7 and 8 related to landscaping schemes for various areas within the development.

7. The appellant, who was not the developer of the 1999 permission development, has applied for a LDC in respect of the 3 numbered conditions. The Council failed to determine the application in the prescribed period. It has, however, indicated that, had it been able to do so, it would have refused to issue the LDC sought.

8. In relation to conditions 6 and 8 the appellant is seeking to confirm the area of land to which they relate. Self evidently from the condition wording, the appeal site does not include the land to which they relate. Even if the purpose of the appellant is a proper use of the s191 procedure (which the Council argues it is not), the relevant land has not been included within the application site. In any event, the Council has confirmed in writing outside of the application process that the appellant's understanding of the geographic scope of the two conditions is correct.

9. In the circumstances, I shall take no further action in relation to the application as it relates to conditions 6 and 8.

10. Condition 7 does relate to the area of land that is the subject of the application. The main issue for the determination of this appeal is whether at the date of the application (23 January 2020) the period during which the Council could have taken enforcement action against a breach of planning control had ended. The breach of planning control claimed by the appellant is a failure to comply with condition 7 of the 1999 permission. The period during which the Council could have taken enforcement action is therefore 10 years. When that period is calculated from varies as set out in the reasons below.

Reasons

Introduction

11. The Planning Practice Guidance confirms that in the case of LDC applications, if a local planning authority has no evidence itself, nor any from others, to

contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. That guidance is based on established case law. The burden of proof does however rest on the applicant/appellant, not the Council.

12. To succeed with this appeal the appellant needs to demonstrate that there has been both a failure to comply with the terms of condition 7 and that the failure occurred not less than 10 years before the application date. The material date is therefore 23 January 2010. Given the construction of the condition, there are a number of ways in which failure to comply with its terms could arise.

The evidence

13. In this case it is fair to say that the evidence produced by both main parties is thin. For the appellant it amounts to the application and supporting statement together with a number of images drawn from various Google applications. Further images and officer reports on other relevant planning applications with sections highlighted were submitted at appeal stage. However, most of the evidence is assertion and interpretation of condition 7 of the 1999 permission. The Council's evidence amounts to little more than counter assertions to those of the appellant.

14. Third parties have however submitted a considerable amount of detailed evidence which the appellant has chosen not to comment upon. In particular, that from the South Hams Society (SHS) and a local resident provide considerable assistance in the determination of this appeal.

Appraisal

15. The 1999 permission development extended housing on Seymour Drive into an area of land now bounded to the west by Nelson Road and to the east by properties on Britannia Avenue and Raleigh Close. My understanding from the reasons given in the decision notice is that the appeal site was within the 1999 permission boundary and subject to condition 7 in order to provide 'an appropriate landscaping scheme and an area of open space accessible to the public in the interests of visual and residential amenities of the locality and to assimilate the development into its surroundings'.

16. Condition 7 says:

> A landscaping scheme shall be carried out and an area of open grassland provided on the areas of land to the west of the residential estate hereby permitted (indicated as 'B' on the approved drawing no. MH232/323A) to the north of the residential estate in accordance with the details shown on that approved drawing. no. MH232/323A. All planting, seeding or turfing comprised in the approved landscaping scheme and within the area of open grassland shall be carried out and completed by the end of the first planting and seeding seasons following the completion of the residential development, or as otherwise may be agreed in writing by the Local Planning Authority. Any trees or plants which within a period of five years from the completion of the residential development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation. The landscaping scheme shall be strictly adhered to during the course of the development and thereafter."

17. The condition contains a subject (a landscaping scheme for areas of land to the west and north of the residential estate permitted), a time scale for implementation (completion by the end of the first planting and seeding seasons following completion of the development) and a five-year maintenance period. I shall come to the final sentence of the condition in due course.

18. A glaring gap in the evidence arises because neither the appellant nor the Council has been able to produce the approved drawing MH232/323A. The Council acknowledges its embarrassment about this. I would perhaps go further and suggest that it is a very unfortunate failure in record keeping. That said, it also suggests a failure of due diligence on the part of the appellant not to ensure that a copy of what would turn out to be a critical document was secured when the land was purchased. I have no reason to doubt that the Council has consistently provided the superseded drawing when asked, including during local authority searches prior to land purchase. However, a careful reading of the 1999 permission would and should have alerted the appellant that this was not the correct drawing.

19. The appellant has relied on its predecessor and initial revision on the basis that it will not be materially different from the approved Revision A. In my view, there is no basis for that contention. In my long experience applicants for planning permission rarely go the expense and trouble of preparing revisions to the submitted planning application documents unless they would include a material change to the application that was likely to result in a planning permission being secured. In my view, drawing MH232/323 cannot be relied upon as showing the approved landscaping scheme. The approved scheme is not therefore known.

20. In final comments the appellant argues that this conclusion must lead to the appeal succeeding since the condition would be unenforceable in perpetuity in the absence of the approved plan. The appellant is wrong on this.

21. It is plain from the wording of s191(3)(a) of the Act that the only consideration is whether at the LDC application date the Council was time barred from taking enforcement action. It is equally plain from s171A (2) that 'taking enforcement action' means the issue of a notice under s172 or a breach of condition notice under s187A. A local planning authority is empowered by s172 (1) to issue a notice where it appears to them that there has been a breach of planning control. Where a local planning authority does take enforcement action, all of these matters may be challenged by an appeal under s174. However, none of them is relevant to the determination of an appeal under s195.

22. Therefore, while the appellant could argue under s174 that any notice issued was unenforceable, that is not a reason for this appeal to succeed.

23. The appellant's primary case is that while an area adjacent to the Nelson Road boundary was planted with whips another area shown on drawing MH232/323 to be planted similarly and the area shown as 'grassland' were never laid out as specified in the planting schedule on the drawing. Setting aside that the evidence for these statements has not been submitted, as explained above, drawing MH232/323 cannot be relied upon as illustrating the approved landscaping scheme. On this point alone, it therefore seems to me that the appeal must fail.

24. Nevertheless, I shall consider whether there has, on the balance of probabilities, been compliance with the various elements of condition 7.

25. Turning first to the timing of carrying out the landscaping scheme, third party evidence suggests that two new build properties on Seymour Drive were sold in November 2000 and June 2001. From that, I conclude that the development was completed around that time and this is supported by the appellant's evidence that at the application date, the breach had taken place some 19 years ago.

26. There is further third party evidence in the form of an image said to be from 2003 that shows many whips in tree shelters planted on what appears to be a mound or bank. This is also consistent with an image dated 2006 submitted by the appellant which, in the knowledge that whips have been planted, would seem to show the even-spaced rows typical of such planting.

27. On the balance of probabilities therefore I see no reason to conclude other than that a landscape scheme was carried out and completed by the end of the first planting and seeding seasons following the completion of the residential development. In terms of timing, there has therefore been no failure to comply with condition 7.

28. Without wishing to labour the point, whether it was the approved landscaping scheme that was implemented is impossible to tell since that scheme is not in evidence. However, third party evidence from those familiar with the land in the early 2000s casts doubt on that of the appellant that the area of open grassland was 'never' provided. Their evidence is that it was and that it is shown in images which they date as 2002.

29. It is my view, on the balance of probabilities, that, to the extent that the approved scheme may have included an area of grassland, it is therefore not possible to conclude that the approved scheme was not 'strictly adhered to'. There would therefore have been no failure to comply with condition 7 in this respect.

30. The third potential failure to comply with the condition relates to the five-year maintenance period. In this case, the Council would have had until around 2016 to take enforcement action against any such failure (up to five years from the completion of the landscaping scheme plus 10 years to take action).

31. The wording of this part of the condition is important in the context of what appears to have actually happened. Action can only be taken if 'any trees or plants….die, are removed or become seriously damaged or diseased.' There is no evidence that any of the trees died, were removed (within the five years), became seriously damaged or diseased. Indeed, all the evidence is to the contrary as the new woodland thrived and became established.

32. There is evidence that the woodland gradually encroached upon the grassland. That may amount to a failure of maintenance but that is not one of the elements that could trigger action under this part of condition 7. In any event, it is for the appellant to establish when this failure occurred. The appellant does not do so since, of course, it is the appellant's position that it was never provided in the first place. There has therefore been no failure to comply with condition 7 in this regard.

33. I turn now to the final sentence of condition 7 which says 'The landscaping scheme shall be strictly adhered to during the course of the development and thereafter.' I assume this wording is intended to secure in perpetuity what I have set out above as the reason for its imposition; that certainly appears to be the Council's position.

34. As set out above, when a material alteration in the condition of the grassland occurred is unknown. Most of the woodland was removed in, according to third party evidence, December 2018. Should the Council take the view that this amounts to a failure to comply with the terms of condition 7 it would have until December 2028 to take enforcement action. The LDC application date is well within this 10-year period.

Conclusion

35. On the balance of probabilities, I have found that a planting scheme was carried out within the timeframe required by condition 7 of the 1999 permission. I have also found that there was no material loss of trees or plants from death, removal, serious damage or disease during the five-year period defined in the condition. In that respect, there has been no failure to comply with condition 7 on the assumption that the planting scheme was that shown on approved drawing MH232/323A.

36. However, that assumption cannot be made. It is very unfortunate that the Council is unable to provide the drawing. Nevertheless, the onus in an appeal of this nature is on the appellant to do so. The appellant cannot. There is no basis to conclude that the predecessor drawing, clearly endorsed 'S/S' ('superseded' as is common ground) can be relied upon as indicative of the approved scheme. The appellant is therefore quite unable to show, as claimed, that there has been a failure to comply with the condition.

37. This is even more so since, in December 2018, a significant amount of the planting was removed by the appellant. It is clear to me that the Council regards the required landscaping scheme to be maintained in perpetuity and considers that the final sentence of the condition achieves that requirement. Even if it was the approved scheme that was implemented, the removal took place about two years prior to the LDC application date. The Council would therefore have had a further eight years to take enforcement action if it appeared to the Council that there had been a breach of planning control.

38. In my view, the application and this appeal therefore never had any realistic prospect of success.

39. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of private undeveloped land relating to the area edged red on the submitted plan 17006_PL502 in continuous breach of condition 7 and the non-application of conditions 6 and 8 of 15/1790/98/F which required the laying out, landscaping and use as an area of open grassland accessible to the public in the interests of the visual and residential amenities of the locality and to assimilate the development into its surroundings was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

Procedural matters

40. A Unilateral Undertaking (UU) made under s106 of the Act has been submitted by Roark Investments LLC, the new owners of the appeal site. The UU is signed and dated 28 September 2020. Both the Council and Devon County Council have commented upon it and I have had regard to it.

41. When assessing the first and second reasons for refusal, the appellant concludes both sections of the appeal statement by saying that there has either been '….manifest incompetence on the part of (Council) officers when processing the appellant's matters or the appellant has been subjected to knowing and wilful prejudice.' I appreciate that the Council's decision will have been a disappointment to the appellant and the appeal system exists to challenge the decision. The appeal will be determined in accordance with s38(6) of the Act. The language used is therefore unfortunate and the allegation is not something I can have any regard to in reaching my decision. The Council will have its own processes through which the matter may be raised.

42. Several matters flow from my determination of Appeal A. First, I have found that a landscaping scheme was implemented within the timeframe set out in condition 7 of the 1999 permission. Second, I have concluded that there is no evidence of any failure of the planting scheme within the 5-year period set in the condition. However, third, I have concluded that since the approved landscape drawing is not available it is impossible to say whether it was the approved scheme that was implemented. These three conclusions lead me to find that there has been no failure to comply with the condition and thus nothing that would prompt the taking of enforcement action.

43. Should the Council construe the final sentence of condition 7 such that the removal of the planting in December 2018 amounts to a failure to comply with the condition, the Council is not time-barred from taking enforcement action. In an appeal under s195 of the Act applying s191(3)(a) of the Act that is all I need to consider. It is not for me to determine if any notice would be upheld and I do not do so. However, the context for my consideration of main issues 1 and 3 (below) is that the appeal site has been cleared of the vegetation that existed prior to December 2018. That clearance may be subject to enforcement action.

Main Issues

44. From my reading of the evidence and my inspection of the site (from the public domain) and the surrounding area I consider the main issues for the determination of the appeal to be:

    (a) The effect that the development would have on the character and appearance of the area;

    (b) The extent to which the development would respond to the challenge posed by climate change; and

    (c) Whether the development proposals would compensate for any loss of biodiversity arising from the site clearance.

The effect that the development would have on the character and appearance of the area

45. The appeal, but not the application, has been accompanied by a landscape and visual impact assessment (LVIA) prepared and checked by members of the Landscape Institute in accordance with that Institute's current guidance. It has been prepared to respond to the first reason for refusal. It was therefore prepared after the appeal site was largely cleared in December 2018. While I consider the LVIA to be a fair and professionally prepared document, the site-specific conditions that form the baseline are not those that the Council intended in approving the 1999 permission development. The conclusions of the LVIA with respect to visual effects in particular must be viewed in that context.

46. The appeal site is at the end of Seymour Drive, a cul-de-sac development off the main A3122 which eventually gives access to Dartmouth from the west. On the northern side of the A3122 Seymour Drive marks the visual edge of the residential area of Dartmouth. In my judgement the appeal site reads as part of the settlement character of the wider Dartmouth area, albeit as a currently undeveloped area. The appeal proposal would be in keeping with that general settlement character in my opinion.

47. Given the topography, Seymour Drive may well always represent the visual edge to the northern side of the A3122 since it represents one of the highest points hereabouts. The land falls steeply from Seymour Drive to Nelson Road below. Dwellings on the western side of the development are exceptionally prominent in views from the west and in longer views both across and from the valley to the north and west where there are a number of public footpaths including the Dart Valley Trail. Their prominence is exacerbated by the white and cream finish to the render.

48. It was partly to soften the visual impact of this development that the Council imposed condition 7 on the 1999 permission. Indeed, it is the Council's evidence that the eventual landscaping of the northern edge of the development that would be provided by the approved planting scheme was material to the development being judged as acceptable in planning terms. In my view, the peripheral planting that has been secured through the Tree Preservation Order does not, and may never, achieve the Council's objective on its own.

49. The appeal site is at a slightly higher level again than the land upon which the last two dwellings on Seymour Drive are built. The scheme design responds to this. The nine dwellings proposed would be set in an arc which follows the line of the promontory on which they would stand. Incorporating a split-level design, the ridge lines would be below those of the existing Nos 80 and 83 Seymour Drive. Nevertheless, both the submitted elevation plans and the photomontage show the new dwellings would be visible above the current planting which is proposed to be managed and strengthened.

50. I acknowledge that the proposed grounding of the overhead cables, pylons and pole-mounted transformer would remove features that detract from the appearance of the appeal site in near and, to a lesser extent, distant views.

51. However, treating the appeal site as a greenfield for the purposes of the LVIA is not correct. It should be assessed as providing the tree planting and

landscaping that was integral to the 1999 permission phase of the Seymour Drive development of which it is a part. That the Council may still be capable of securing this scheme through taking enforcement action needs to be acknowledged. In saying this, I neither make nor imply any criticism of those preparing the LVIA. Assessment could only be made in the context of the site as it appeared in 2020 and the client instructions that may have been given.

52. That said, I believe the finding of visual effects from the development that would be 'moderate, adverse significance' for pedestrians and motorists in the immediate vicinity and 'minor, adverse significance' for all other visual receptors understates that which would flow from an assessment against the true baseline. While the development would introduce elements and built form already present and typical of the immediate context, that would not have been apparent in some views had the site not been cleared of much of the planting.

53. I therefore conclude that the development would not conserve visual quality of the immediate area and would not appropriately compensate for the residual adverse effects that result from the enabling site clearance. The appeal proposal would therefore conflict with policy DEV23 of the Plymouth and South West Devon Joint Local Plan 2014-2034 (JLP), adopted in March 2019.

The extent to which the development would respond to challenge posed by climate change

54. The application was supported by an Energy Statement (ES) dated June 2019. The author is not identified and the statements within it are not sourced. Some of the criticisms of both types of heat pumps (concerning their efficiency and effectiveness of both types and the noise associated with air source heat pumps) are difficult to reconcile with government aspirations to see many tens of thousands of such heat pumps installed in homes each year and to make available grants to the tune of several £thousands to enable homeowners to do so if replacing a gas boiler.

55. Read carefully, the main difficulties identified in the ES with the installation of heat pumps and the types of solar panels considered are cost of installation and site design. For example, ground source heat pumps are said not to be an appropriate solution for the proposed development because of the number of boreholes needed to generate sufficient heat to serve the development alongside the high cost for each plot. A different layout with fewer dwellings is not considered.

56. Similarly, for air source heat pumps. The principal criticisms are the need for a large external compound for the external units, the visibility to the general public of the units and the noise produced (although who would be affected is not made clear). These are all matters that could be addressed through site and plot design. I give very little weight to claimed comparisons of Nitrous Oxide emissions between these heat pumps and new gas boilers or the statement that associated CO2 emissions from electricity generation will be greater than those from a high efficiency gas system since no source is given for either contention.

57. Solar Photovoltaic panels are dismissed mainly because of the adverse visual impact locally, particularly if used on all proposed houses. Again, this would seem to be a layout design issue to ensure that the surfaces on which the

panels were fixed minimised the visual impact while maximising the solar exposure.

58. Taking these matters into account and reading JLP paragraph 6.126 in the light of section 14 of the July 2021 (current) National Planning Policy Framework (Framework) it is my view that the development proposed clearly conflicts with JLP policy DEV32 (3).

59. I appreciate that the Council may have sometimes come to different conclusions in relation to 'fabric first' issues and may have also imposed conditions in some circumstances. However, as the matters raised by this appeal on this issue are mainly those of principle of site design, a condition would not be appropriate.

60. Furthermore, this is an issue where planning policy may not be quite keeping pace with developments elsewhere. My site visit took place on the third day of the Cop26 climate conference in Glasgow where the need for urgent action was once again made crystal clear by the Prime Minister. The recent initiatives such as those mentioned above are therefore a material consideration which I believe should carry some weight. It seems to me folly to build new houses now that will commit the owners to potentially expensive and disruptive alterations as the UK moves to decarbonise the heating of its housing stock.

Whether the development proposals would compensate for any loss of biodiversity arising from the site clearance

61. National Planning Practice Guidance explicitly states that:

> the existing biodiversity value of a development site will need to be assessed at the point that planning permission is applied for. It may also be relevant to consider whether any deliberate harm to this biodiversity value has taken place in the recent past, and if so whether there are grounds for this to be discounted in assessing the underlying value of the site (and so whether a proposal would achieve a genuine gain). (Paragraph: 026 Reference ID: 8-026-20190721)

62. The application was not made until August 2019, some eight months or so after the appellant cleared the land. The application was supported by a preliminary ecological appraisal prepared by ecological consultants. Survey work was done in January 2019 when, as noted in the report, the site consisted largely of recently cleared ground. While there is no evidence that this was done to deliberately harm the biodiversity value of the appeal site, the effect was that the consultants could not assess the biodiversity value of the site as it would have been not much more than a month before the survey date. Again, while no criticism of the consultants is made or implied, the report is of very limited value in determining this issue.

63. The appellant argues that JLP policy DEV26 is not relevant to the determination of this appeal since the 'net gains in biodiversity' requirement applies only to major development. It is common ground that the development proposal is not a 'major' development as defined. The Council contends that within the relevant part of the policy (point 5), it is only the first sentence that applies to major development while the rest applies to all developments. The final two sentences of the policy, and especially the last, lend weight to the Council's interpretation in my view.

64. That may ultimately be a matter for the court. However, if the appellant is correct, JLP policy DEV26 would appear inconsistent with the final clause of paragraph 179 (b) of the Framework. That requires plans to identify and pursue opportunities for securing measurable net gains for biodiversity. Framework paragraph 219 explains how weight should be given to existing policies according to their consistency with the policies in the Framework.

65. It seems to me that in the circumstances of this appeal, and notwithstanding the various undertakings in the UU, any net gain in biodiversity cannot be measured because the biodiversity condition of the site before it was cleared is unknown. It should be noted also that within the appeal site the consultants assess that the net loss or gain to the biodiversity budget from the proposals would be 'neutral' for all habitats and species other than bees. Any enhancements that may arise would be through the management of the off-site boundary planting that already exists.

66. I therefore conclude that the proposal would not secure a measurable net gain for biodiversity. On this issue there would therefore be a conflict with JLP policy DEV26 (5) or, if deemed inconsistent with the Framework, paragraph 179 (b) of it.

Other matters

67. It is clear from the images provided in connection with Appeal A and from the totality of the evidence that tree cover on the appeal site was more extensive than that now retained on the margin and subject to the Tree Preservation Order. Whether those trees resulted from self-seeding or implementation of the approved landscape drawing forming part of the 1999 permission is unknown for the reasons set out in the Appeal A decision.

68. There has been a somewhat irrelevant debate as to whether that planting amounts to a woodland. JLP policy DEV28 quite clearly applies to both with JLP paragraph 6.105 identifying in the first bullet the very reason why condition 7 of the 1999 permission was imposed. Strictly speaking, the development has been designed so as to avoid the loss or deterioration of woodland/trees but that is only because the woodland/trees were removed before the scheme was submitted.

69. A conclusion of no conflict with JLP policy DEV28 is therefore not appropriate prior to the Council determining whether or not it will take enforcement action against a failure to comply with condition 7 of the 1999 permission.

70. In the officers' report it is explained how the development would accord with a number of relevant development plan policies. I have no evidence to disagree with those conclusions.

71. The Council does raise a design issue arguing that the use of timber cladding is out of keeping with the traditional vernacular of Dartmouth. If this was the only issue that may cause planning permission to be denied, I believe a condition would be appropriate to overcome the concern. However, as set out above, it is not and I have also identified under the second main issue what I regard as a more fundamental design issue to be addressed.

Planning balance

72. For the reasons set out above I have found that the development proposed would conflict with development plan policies relating to the visual impact that the development would have, the failure to address positively the challenge of climate change and the failure to demonstrate that there would be a net gain for biodiversity. S38(6) of the Act requires the appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.

73. Where, as with most of the other matters discussed, there is accordance with the development plan, this is of neutral weight in the planning balance.

74. It is an objective of national planning policy to significantly boost the supply of homes. As a recently stated government policy this attracts significant weight in the planning balance. However, it is the Council's uncontested evidence that it can demonstrate a five-year supply of housing sites across the JLP area. Accordingly, Framework paragraph 11 (d) is not engaged; Framework paragraph 12 applies.

75. Material considerations do not therefore outweigh the conflict with the development plan that I have identified.

Conclusion

76. For the reasons given above I conclude that the appeal should be dismissed.

Overall conclusions

77. With regard to Appeal A, I conclude that the Council's deemed refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail.

78. With regard to Appeal B, I conclude that the appeal should be dismissed.

Brian Cook

Inspector