



Appeal Decision

Site Visit made on 11 October 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2022

Appeal Ref: APP/P2114/W/21/3270271

318 Fairlee Road, Newport PO30 2JU

- 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 A Jones against the decision of Isle of Wight Council.
 - The application Ref 20/01367/FUL, dated 19 August 2020, was refused by notice dated 13 January 2021.
 - The development proposed is for a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At application stage the appellant submitted a unilateral undertaking (the 'UU'). The Council considered that it addressed its requirements for the provision of affordable housing and, in combination with a suggested condition, mitigation with respect to the Solent and Southampton Water Special Protection Area (the 'SPA'). During the appeal the appellant submitted an additional UU (the 'AUU') to update a financial contribution relating to the SPA, which the Council confirmed it considered acceptable.
3. During the appeal the Council suggested an updated condition with respect to the SPA (the 'updated condition') and copied it to the appellant. The updated condition was subject to consultation with Natural England and the appellant. I have taken comments received into account in my decision, including a copy of the Council's 'Position Statement: Nitrogen neutral housing development, November 2021' (the position statement') submitted by the appellant.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the Solent and Southampton Water Special Protection Area; and
 - the character and appearance of the area.

Reasons

Special Protection Area

5. The appeal site is within a zone of influence of the SPA, which is a European site (habitats site¹) designated to safeguard feeding habitat and its population of overwintering birds. A significant effect on the SPA would be likely to occur

¹ The Conservation of Habitats and Species Regulations 2017

from the proposed increase in residential development alone, or in combination with other plans and projects, in an area where (i) increased nitrates from foul wastewater entering the Solent would exacerbate eutrophication and (ii) additional residents would be within such proximity to the SPA that they would be likely to visit for recreational purposes. Both circumstances would be harmful to the feeding habitat and to birds.

Nitrates

6. The Council considers that the updated condition would mitigate harmful effects on the SPA due to nitrates and reflects the findings of a recent appeal but has provided no appeal decision or reference. I note that the wording of the updated condition varies from that contained in Appendix B of the position statement and that the appellant did not object to it being imposed.
7. The updated condition would prevent occupation of the dwelling until details of drainage and disposal of foul wastewater had been submitted to and approved by the Council, including to confirm which wastewater treatment works (WwTW) would serve the dwelling. In the event that it was not the Southern Water WwTW at Sandown, it would require details of a '*nutrient budget*' and '*any necessary mitigation*' to prevent harmful effects on the SPA to be approved by the Council before the development commenced.
8. I note that the first part of the updated condition requires the WwTW to be confirmed before occupation, but the second part (in cases where a different WwTW is to be used) requires a scheme to be submitted and approved before commencement and implemented before occupation. However, this timing is inconsistent. The first part would allow the development to commence on the assumption the Southern Water WwTW at Sandown is to be used, but if this later turns out not to be the case, the developer would already be in breach of the second part.
9. Notwithstanding the above, the appellant suggests that a sealed cesspit could be installed '*which will be regularly emptied and suitably discharged via the Sandown Wastewater Treatment Works*' and that this would accord with the position statement. However, in this 'Option 1' scenario, the position statement requires an applicant to '*gain written confirmation from Southern Water that it would drain to Sandown*'. There is no evidence from Southern Water to that effect before me. I am also mindful that the standard time limit condition would mean the development may not be implemented for up to 3 years or occupied thereafter. There is no evidence in this appeal that the Sandown WwTP would have capacity in the future.
10. If the proposal cannot drain to the Southern Water WwTW at Sandown the updated condition would require details of alternative '*nitrogen neutral*' mitigation to be approved by the Council in the future, after planning permission was granted ('Option 2' in the position statement). It is also not clear whether achieving this status might require a planning obligation.
11. I am not able to assess drainage details or alternative mitigation that is not before me. In this respect, I note that Natural England commented that '*The Competent Authority should have confidence that any subsequent mitigation which is relied upon would be certain to succeed. In view of this, I would agree that you are unable to establish that the proposal would have no adverse effect on the integrity of the SPA.*'

12. Taking all of the above into account, and as the Competent Authority in this appeal, I cannot therefore be confident or certain that the updated condition would be effective in delivering necessary and proportionate mitigation, especially if the proposal could not be drained to the Southern Water Sandown WwTP (ie a worst case scenario). Accordingly, in these circumstances, and having regard to the tests and advice in the National Planning Policy Framework² (the 'Framework') and in Planning Practice Guidance³ (the 'PPG'), I find that the updated condition would not be reasonable or precise. No other suitable mechanism has been suggested by either main party and, as a result, I cannot establish that the proposal would have no adverse effect on the integrity of the SPA with regard to nitrates.

Recreation

13. The Council has adopted the 'Solent Recreation Mitigation Strategy' (December 2017) to address this matter and it has carried out an appropriate assessment. In this case, mitigation measures have been identified for access management and monitoring measures to reduce the effect of recreational disturbance on the SPA. The UU and the AUU would secure a financial contribution towards their implementation and the Council agrees that on this basis the proposal would not adversely affect the integrity of the SPA. I have had regard to the Council's approach and to the UU and the AUU in reaching my conclusion below.
14. Notwithstanding the planning obligations contained in the UU and the AUU with regard to recreational impact on the SPA, I find that the condition would not adequately mitigate the likely significant effect on the SPA due to increased nitrate disposal into the Solent. Consequently, there would be significant harm to the SPA feeding habitat and its population of overwintering birds. Accordingly, the proposal would not comply with Island Plan⁴ (IP) Policies SP5 and DM12. These policies include that development should protect the biodiversity of natural environments and the integrity of SPAs.

Character and appearance

15. Fairlee Road exits the built-up area of Newport into the countryside. This rural part of the road includes ribbon housing development of varying lengths, alternating along either side of the road separated by fields, hedgerow and trees. Dwellings in these frontages have a broadly similar building line and setback from the road and are mainly 2-storey detached or semi-detached houses. Some are closely spaced to each other and many have front gardens used as car parking areas or include drives, including development recently permitted by the Council.
16. No 318 Fairlee Road is the left hand half of a semi-detached pair of houses which, together with its companion at No 316, are spatially and visually discrete from most other dwellings along the road. Combined with their vehicular accesses, parking areas, and gardens this small pocket of residential development is though domestic in nature and distinct from the surrounding

² Framework paragraph 56

³ PPG paragraph 21a-003-20190723

⁴ The Island Plan, the Isle of Wight Council Core Strategy (including Minerals & Waste) and Development Management Policies Development Plan Document, March 2012

- rural landscape. There is an extant planning permission granted on appeal⁵ for a detached house in the side garden of No 316 (the permitted house).
17. The proposal would sub-divide the plot of No 318 and provide a 2-storey detached house in the side garden. It would share the vehicular access with No 318 and each house would have separate parking areas in the respective front gardens. The siting of the new house and its garden would not encroach beyond the existing residential curtilage.
 18. While the proposed house would not replicate the detailed design, appearance or scale and massing of No 318, No 316 or the permitted house, it would nonetheless be designed to integrate into its plot and be broadly compatible in these regards and external materials with these dwellings and dwellings elsewhere along this part of Fairlee Road. It would also create a short linear frontage of houses.
 19. The house would be sited significantly closer to No 318 and on a narrower plot, than the permitted house in relation to No 316. However, there would nonetheless be sufficient spaciousness between the resulting dwellings and either side of these dwellings such that the proposal would not visually or spatially erode the undeveloped gaps either side or unduly close the proximity of dwellings to each other. Furthermore, the increased setback of the proposed house in relation to No 318 would ensure that it was not unduly conspicuous or prominent. Consequently, the spacing of these houses would not appear overly cramped or contrived and the site would not, therefore, appear over developed in its immediate setting.
 20. The proposal includes space for turning so that cars could exit the site in a forward gear, including at No 318. The parking area is therefore in part a consequence of its intended function. However, it would be similar in location and extent to what is intended to serve No 316 and the permitted house and as exists at other dwellings elsewhere along Fairlee Road. Moreover, Fairlee Road is a relatively fast, busy A road and reversing cars into this road would be an unacceptable highway hazard, especially when cars were parked in the lay-by in front of the site. The parking area would therefore be a significant benefit in this regard. Notwithstanding what is shown in the proposed site plan⁶, I consider that a suitably worded condition could secure details of appropriate surfacing materials and landscaping. This would ensure that the site frontage would not be dominated by hard surfacing or have an undue adverse visual impact on the streetscene.
 21. Considering the above, I find that the proposal would be in-keeping with the general pattern and arrangement of residential development in the immediate context of the site and in the wider context of this rural part of Fairlee Road. It would not therefore cause harm to the character and appearance of the area. Consequently, it would comply with IP Policy DM2. This policy includes that development should be high quality in design, have regard to its context and constraints (such as adjacent buildings, views, hedges and trees), complement the character of the surrounding area and conserve the environment.

⁵ APP/P2114/W/19/3237165

⁶ Drawing number 20-786-01

Other Matters

Affordable housing

22. IP Policy DM4 seeks financial contributions towards provision of affordable housing off-site for developments of 1-9 units in rural areas. It is therefore inconsistent with Framework paragraph 64. However, the evidence to justify the Council's approach, including a detailed formula for calculating a contribution, is contained in the Council's Affordable Housing Contributions supplementary planning document, March 2017 (SPD). The SPD includes that there is an acute housing affordability issue on the Island and a lack of sufficient affordable housing delivery, especially a lack of larger housing sites, to meet identified needs. There is no more up-to-date evidence to suggest otherwise. In these circumstances off-site provision via an appropriate financial contribution would be consistent with Framework paragraph 63(a).
23. The appellant has agreed to make the requisite financial contribution via the UU and there is no suggestion that it would render the development unviable. It would therefore support the provision of affordable housing off-site elsewhere. This planning obligation would comply with IP Policy DM4 and the SPD and would be an appreciable benefit of the proposal. The UU would therefore be necessary, related directly to the development and fairly related in scale and kind. As such, it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations in Framework paragraph 57.

Planning Balance

24. The Council accepts that it cannot demonstrate a 5-year housing land supply. I have no reason to differ. As a consequence, Framework paragraph 11(d) is engaged. Framework paragraph 11(d)(i) states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
25. The provision of one dwelling would make a small contribution to the Island's housing supply and the proposal would make commensurate provision for affordable housing. These benefits would be aligned with the Government's objective to significantly boost the supply of homes, including on small sites and previously developed land, and meet the needs of people with specific requirements for affordable housing. The social, economic and environmental benefits associated with building and occupying the home, which would be compatible with the character and appearance of the area and with the SPA in respect of recreational impacts, are factors which carry moderate weight in the scheme's favour.
26. Subject to suitably worded conditions, the development would otherwise not cause harm to the living conditions of existing or future occupiers, would be acceptable in highways terms and not adversely affect trees or hedgerows. The absence of harm, or compliance with development plan policies, in these regards are neutral factors in my decision.
27. However, the Framework states that habitats sites are areas or assets of particular importance⁷ which, by virtue of Framework paragraph 181(a),

⁷ Framework footnote 7

include Special Protection Areas. I have found in the first main issue above that there would be significant harm to the SPA with regard to nitrates and therefore Framework paragraph 180(a) provides a clear reason to dismiss the appeal. Consequently, the presumption in favour of sustainable development does not apply in this case. The proposal would conflict with the relevant development plan policies, which are consistent with the Framework, and would diminish the Council's objectives in these regards. Consequently, I give substantial weight to these matters.

28. Since I intend to dismiss the appeal for these reasons, there is no need for me to consider the appellant's UU or AUU, or to undertake appropriate assessment, with regard to recreational impact on the SPA.

Conclusion

29. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.

30. For the reasons given above, I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR