
Appeal Decision

Site visit made on 18 January 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/H1705/W/21/3277256

Land at Roman Way and Worting Road, Worting, Basingstoke RG23 8PX

- 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 Chris White of Antler Homes against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 20/02582/FUL, dated 15 September 2020, was refused by notice dated 22 December 2020.
 - The development proposed is the erection of 20no. dwellings in a mix of 2, 3 and 4no. bedrooms, provision of an area of open space and alterations to existing vehicular access onto Roman Way and all other associated development works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant submitted new evidence relating to a site plan. This evolved the design of the proposal compared to what was considered by the Council when determining the application and on which other interested parties were originally consulted.
3. It is important to consider if accepting this new evidence would deprive those who should have been consulted on the changed proposal of the opportunity of such consultation, in accordance with the Wheatcroft Principles.
4. On this basis, the type and configuration of housing and the provision of open space are fundamental components of the proposal and accepting amendments of the nature put forward would prejudice the involvement of other interested parties.
5. Guidance¹ is clear that if an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by me is essentially what was considered by the Council, and on which interested parties' views were sought.
6. Consequently, the appeal has been decided using the site plan that was originally considered by the Council and it has not been necessary to resolve some of the disputes which have emerged and relate solely to the new site plan.

¹ Procedural Guide: Planning Appeals – England – Annexe M.

7. The appellant submitted new evidence relating to a Section 106 Unilateral Undertaking. Whilst this was submitted towards the end of the appeal process, it is a potentially legally binding document, and therefore it is necessary for me to consider when making my decision. The Section 106 Unilateral Undertaking has been accepted on this basis and parties given an opportunity to comment.
8. The Section 106 Unilateral Undertaking is drafted based on the proposal put forward under the revised plans. As I am not in a position to accept the revised plans, the only logical conclusion is that the Section 106 Unilateral Undertaking does not fully relate to the proposal being considered under the appeal and cannot be given any weight. Consequently, it is not necessary for me to making a finding on the planning obligations therein.
9. However, this also suggests that any contributions and the securing of affordable housing are also not made out. For clarity, while I cannot take the Section 106 Unilateral Undertaking into account, I have still considered whether the delivery of affordable housing, and any weight attached to that, would have informed my decision differently. Were the scheme to have been acceptable in all other matters, then I could have considered whether an alternate Section 106 Unilateral Undertaking or even a condition could have ensured delivery of the proposed affordable housing.
10. The appellant also submitted new evidence relating to drainage. It is clear that this new evidence has not fundamentally changed the nature of the proposal and it would not prejudice other interested parties who have had an opportunity to comment under the appeal. Based on this new evidence, the Council has confirmed it no longer upholds its reason for refusal relating to drainage.
11. There is a dispute whether dormouse evidence was ever submitted with the original application. It is clear from correspondence with the appellant, that the Council were instructed to determine the application without this evidence and the dormouse evidence submitted with the appeal is new. However, it is clear that this new evidence has not fundamentally changed the nature of the proposal and it would not prejudice other interested parties who have had an opportunity to comment under the appeal. It is accepted on this basis.
12. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) set out the requirements for Environmental Impact Assessment's (EIA's). The Council's screening opinion determined that the proposal is not EIA development. The appeal has been considered accordingly.
13. The National Planning Policy Framework (the Framework) was updated during the course of the appeal and any comments made by the parties and any implications arising have been duly considered in making my decision.

Main Issues

14. The main issues are:
 - (a) the effect of the proposal on the character and appearance of the area, including Worting Conservation Area, the setting of listed buildings and non-designated heritage assets;
 - (b) whether the proposal delivers an appropriate mix of housing types;

- (c) whether biodiversity net gain is required and to what extent;
- (d) whether sufficient levels of multifunctional green space have been provided; and
- (e) the effect of the proposal on dormouse habitat;

Reasons

Character and Appearance

15. The site is located to the east of Worting and to the west of Basingstoke. It comprises open space and, in conjunction with other open space directly to the south, provides an undeveloped and spacious setting on the approach into Worting when travelling along Worting Road. Similarly, when travelling along Roman Way and looking in the direction of Worting, it is quite clear that the appearance of Worting's setting is much less urbanised and more rural than when looking in the direction of Wykeham Drive.
16. These open spaces help protect the distinctly separate and smaller settlement of Worting from coalescence with the wider contiguous suburbs of Basingstoke. Trees² occupy the western extents of these open spaces, contributing to a leafy character and appearance and reinforce the settlement's setting. Altogether, the site presents itself as an area of important green infrastructure integral to the landscape context.
17. There has been some modern infill development granted planning permission at appeal³ along Warham Road to the south of Worting, where it was found to be harmful to Worting's setting. This development was granted planning permission on the balance of material considerations, and it is clear that any potential further piecemeal erosion of the setting also needs to be justified in and of itself.
18. A major strategic housing allocation washes over the site, referred to as Manydown in the Basingstoke and Deane Local Plan 2016 (the LP) and specifically addressed under Policy SS3.10. Planning permission⁴ was recently granted for a phase of development therein. However, the planning permission was granted in outline with all matters reserved. Consequently, layout has not been considered in detail.
19. Whilst it is indicatively shown that some residential development would come forward around Worting, the flexibility inherent in an outline proposal and the continued agency of the Council in controlling the details of siting for future residential development, means that there are opportunities to ensure the distinctiveness of Worting is preserved.
20. The Manydown Development Brief Supplementary Planning Document 2016 is clear that the strategic housing allocation should come forward in a manner that retains the visual and physical gap between Basingstoke and Worting.

² A tree preservation order covers some of the trees on the site itself

³ APP/H1705/A/14/2219070

⁴ 17/00818/OUT

21. Whilst I note the appellant's contention that a supplementary planning document cannot introduce new planning policies into the development plan, Policy EM1 of the LP requires development proposals to maintain the integrity of existing settlements and prevent their coalescence.
22. Consequently, and taking policy and guidance together, the strategic housing allocation and planning permission do not presuppose the delivery of housing at the site is acceptable.
23. The newly constructed roundabout is on the eastern edge of the site, and whilst longer range views and the appearance of Worting's setting might be affected by this, more intimate views and experiences of its setting, such as those directly adjacent to the site, are not. Altogether, Worting's position as a separate settlement is clearly distinguished by the existing pattern of development.
24. The site is located within Worting Conservation Area, which derives some heritage significance from its presentation as a tranquil enclave settlement established around the 18th and 19th century, with little 20th and 21st century alteration or intrusion.
25. Similar to my preceding assessment of the site's role within the area's existing pattern of development, it also makes a significant contribution to the character and appearance of the conservation area by protecting it from being subsumed into the wider suburbs of Basingstoke, preserving its distinctive character.
26. The site's role in helping define the area's pattern of development is reaffirmed by its designation within an Open Area of Townscape Importance and recognition as such within the Worting Conservation Area Appraisal 2003. Historic England have made similar findings in their consultation response on the proposal.
27. Notwithstanding the statement of common ground⁵ and the local plan inspectors report that preceded the LP's adoption, Policy SS3.10 requires development to conserve and enhance the architectural and historic significance of the Worting Conservation Area with its listed buildings including Worting House, respecting their setting, whilst retaining the separate identity and character of Worting.
28. It is clear that the development plan's policy and guidance objectives seek to preserve the character and appearance of the area as defined within the Worting Conservation Area Appraisal 2003, which is still broadly relevant to the situation on the ground despite its age.
29. Several listed buildings and non-designated heritage assets populate Worting Conservation Area including, The Old Rectory (Grade II), Hatchetts (with attached garden wall) (Grade II), Hillside (Grade II), Worting House (Grade II*), Stable Block to the West of Worting House (Grade II), Church of Thomas a Becket (Grade II), Worting Farm (Grade II), 405 Worting Road (Grade II) and 411, 413, 415 and 417 Worting Road (Grade II) and brick outbuilding identified as The Forge and St Thomas of Canterbury Church Hall.

⁵ prepared as part of the local plan's examination

30. These derive some heritage significance from their relationship within the previously described pattern of development.
31. The presence of protected trees along the western boundary of site means that these buildings are mostly screened from general view. However, the site still plays an important role in revealing their heritage significance when on approach and travelling through the area. This is because it helps protect against coalescence and maintains a distinction between the tranquil enclave and settlement of Worthing and wider suburbs of Basingstoke.
32. The proposal would deliver residential development that erodes the open space of the site, leading to a harmful urban sprawl between the suburbs of Basingstoke and the distinctive settlement of Worthing. It is clear that this would depart from the pattern of development in Worthing generally and diminish the distinctiveness and heritage significance of Worthing Conservation Area, listed buildings and non-designated heritage assets therein.
33. It is also clear the density and layout of the proposal is not in keeping with the historic enclave and is more reflective of Basingstoke's modern suburbs. I concur with the Council that it would generally be of a higher density, create limited front garden spaces and small rear gardens, and deliver large amounts of additional hard surfacing as a result of the internal road layout and visitor parking spaces.
34. There are attempts to include intervening landscape buffers to soften the built form, including an area of open space. However, in practice the site would still present itself as having been developed, and the distinction between Basingstoke and Worthing would still be eroded.
35. Altogether the proposal would urbanise the site to a significant degree and fail to preserve Worthing's distinctiveness, whilst the design of the proposal would reinforce the harmful effects of coalescence and not mitigate them.
36. In addition to the above, the requirements of the Manydown Development Brief Supplementary Planning Document 2016 are clear that a 20 metre minimum buffer distance should be provided between the edge of any woodlands.
37. This would ensure a naturally graded edge to woodlands and sufficient room for maintenance access, whilst also allowing the natural processes of tree death and decay to occur without unnecessary risk to people or property, guarding against future development pressures.
38. Consequently, the proposal would encroach on protected trees and lead to future development pressures, whilst also departing from the design direction of the wider allocation. The proposal is supported by relevant tree surveys and impact assessments, and may otherwise accord with good practice, but would still fail to integrate in the context described.
39. There may be some instances where the proposal accords with the requirements of the Manydown Development Brief Supplementary Planning Document 2016, such as in relation to adequate drainage infrastructure, among other things. However, meeting some of these requirements does not change the thrust of my findings overall.

40. While the development would affect only the eastern part of the conservation area, this is an important area relevant to its setting as set out above. Nonetheless, boundary trees would help screen the listed buildings and non-designated heritage assets, mitigating some of the visual effects on their setting. These factors in conjunction with the modest scale of the proposal would consequently represent less than substantial harm.
41. Overall, the proposal would harm the character and appearance of the area, Worting Conservation Area and the settings of listed buildings and other non-designated heritage assets.
42. Consequently, it would be in conflict with Policies SS3.10 (e), (i) and (h), EM1, EM10 and EM11 of the LP and Principle 4 (e), (i) and (j) of the Manydown Development Brief Supplementary Planning Document 2016, the Landscape, Biodiversity and Trees Supplementary Planning Document 2018 the Heritage Supplementary Planning Document 2019 and the Worting Conservation Area Appraisal 2003.
43. Among other things, these development plan policies and guidance documents reflect the statutory duties set out within Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which require decision makers to give special regard to the desirability of preserving listed buildings and their setting and pay special attention to the desirability of preserving or enhancing the character and appearance of conservation areas.

Mix of Housing Types

44. In terms of open market housing, the proposal seeks to provide 12no open market dwellings comprising 6no 3 bedroom dwellings and 6no 4 bedroom dwellings. Policy CN3 of the LP requires a range of house types and sizes based on local requirements. The Housing Supplementary Planning Document 2018 sets out that borough wide need is for small family homes and homes suitable for older people wishing to downsize.
45. Consequently, it is reasonable to conclude that a proposal comprising smaller dwellings of 2 and 3 bedrooms would be more appropriate to serve local needs compared to a proposal comprising larger dwellings of 3 and 4 bedrooms. In the interests of community cohesion, it is also appropriate to provide a mix of both open market and affordable housing, and to ensure smaller dwellings are not exclusively affordable or segregated in one part of the site.
46. In terms of affordable housing, the proposal would comprise 3no 2 bedroom dwellings and 5no 3 bedroom dwellings with 6no dwellings (75%) offered for affordable rent and 2 dwellings (25%) offered as shared ownership. Policy CN1 of the LP requires 40% of open market housing to be affordable and the proposal would accord with this policy requirement.
47. The affordable housing tenure split deviates marginally from the policy requirement of 70% rented and 30% intermediate affordable housing. However, it is sufficiently close for the purposes of a sensible rounding exercise in order to achieve a split that translate into whole dwellings.

48. Principle 1 (c) of the Manydown Development Brief Supplementary Planning Document 2016 deals with self-build housing requirements. There is a lack of self-build housing provision on site and there is no viability evidence submitted to support the mix proposed or to justify a departure from policies within the development plan.
49. Altogether, the proposal deviates from the open market and self-build housing policy requirements and conflicts with Policies CN3 and SS3.10 (b) of the LP, Principle 3.1 of the Housing Supplementary Planning Document 2018, and Principle 1 (c) of the Manydown Development Brief Supplementary Planning Document 2016.

Biodiversity Net Gain

50. Paragraphs 174 and 179 of the Framework require that planning policies and decisions contribute to and enhance the local environment in a number of ways, including provision of net gain for biodiversity.
51. Guidance⁶ defines biodiversity net gain as works which deliver measurable improvements for biodiversity by creating or enhancing habitats in association with development. Biodiversity net gain can be achieved on-site, off-site or through a combination of on-site or off-site measures. However, the extent of net gain that may be required is not defined.
52. On 9 November 2021, the Environment Act 2021 (c. 30) (the Act) received Royal Assent. The purpose of the Act is to make provision for targets, plans and policies with the intention of improving the natural environment, including provisions for a mandatory biodiversity net gain objective. The objective is met when the biodiversity value attributed to the development exceeds the pre-development value of the onsite habitat by at least 10%.
53. However, it is clear that the Act is primary legislation and provisions relating to this objective require secondary legislation before coming into force. Consequently, there is no basis to stipulate that the proposal in this case should provide at least 10% biodiversity net gain, unless there are corresponding requirements in the development plan.
54. Whilst the 10% biodiversity net gain requirement is not mandatory due to lack of development plan provision, net gains should be measurable for each standalone proposal in accordance with the Framework and a suitable metric demonstrating this has not been provided in this case.
55. There is no evidence demonstrating that a suitable metric can be appropriately secured by planning condition. Furthermore, whilst the proposal is part of a wider strategic allocation, there is no evidence a deficiency in net gain in this case would be offset elsewhere.
56. Overall, the proposal would not provide measurable biodiversity net gain and would conflict with Policies SS3.10 (k) and EM4 of the LP, Principle B7 of the Landscape, Biodiversity and Trees Supplementary Planning Document 2018, Principle 4 (d) of the Manydown Development Brief Supplementary Planning Document 2016, and Paragraphs 174 and 179 of the Framework.

⁶ Planning Practice Guidance, Paragraph: 022 Reference ID: 8-022-20190721

Multifunctional Green Space

57. The Green Infrastructure Strategy for Basingstoke and Deane 2018 makes clear that the proposal would require 3146m² of multifunctional green space at 65m² per person and 24.2m² equipped play space at 0.5m² per person. The proposal would provide 2379.42m² of multifunctional green space and would therefore be deficient in this context.
58. There is no evidence that a local surplus of multifunctional green space exists or that such a surplus, if it did exist, would mitigate the proposal's deficiency. Consequently, the future occupiers would have deficient levels of multifunctional green space to use, and this would harm their living conditions.
59. The site is bounded by the highways of Roman Way to the east and Worting Road to the south. These are locally important and busy highways linking with the wider strategic highway network. The traffic noise and disturbance would diminish the enjoyment of future occupiers when using the multifunctional green space given its current proximity. Consequently, it would compound the harm derived from already deficient levels of multifunctional green space.
60. Even if access is reduced somewhat, this would be relatively limited given the modest size of the site. Consequently, and on balance, the siting of the affordable housing in relation to multifunctional green space would not be altogether harmful.
61. Policy EM5 of the LP is clear that proposals will be permitted where they do not prejudice the delivery of the Council's green infrastructure strategy, among other things. In this context, the proposal would provide deficient levels of multifunctional green space in a location where enjoyment would be disturbed by a busy highway network.
62. Overall, the proposal would not provide sufficient multifunctional green space and would conflict with Policies SS3.10 (e) and EM5 of the LP, the Landscape, Biodiversity and Trees Supplementary Planning Document 2018 and the Green Infrastructure Strategy for Basingstoke and Deane 2018.

Protected Species - Dormouse

63. The implications of my procedural matter and finding on dormouse evidence is that new evidence exists under the appeal in order to determine that the proposal would not have an unacceptable effect on dormouse habitat.
64. The Council did not take the opportunity to comment on the new evidence, and there are no arguments demonstrating that it is otherwise deficient, or the proposal would be harmful.
65. Consequently, it would not be reasonable for me to determine otherwise than in accordance with the findings presented in the dormouse survey and arguments presented by the appellant.
66. Overall, the proposal would not harm dormouse habitat and would not conflict with Policies SS3.10 (k) and EM4 of the LP, the Landscape, Biodiversity and Trees Supplementary Planning Document 2018 or Principle 4 (d) of the Manydown Development Brief Supplementary Planning Document 2016.

Planning Balance

67. Paragraph 199 of the Framework is clear that great weight should be given to a designated heritage asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Thereafter, Paragraph 202 of the Framework sets out that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
68. There are relatively few benefits adequately secured in favour of the proposal. This is because the Section 106 Unilateral Undertaking has been drafted in such a way that means it does not fully relate to the proposal being considered under the appeal and the planning obligations therein carry no weight.
69. Consequently, the only real potential benefits are those concerning the delivery of market housing and associated socio economic activity. There is no evidence before me, by way of policy citations or other guidance, demonstrating that new homes bonuses, council tax receipts and community infrastructure levy payments are benefits that should be considered in the planning balance.
70. In giving considerable importance and weight to the heritage harm I have set out above, it is clear that for the purposes of Paragraph 202 of the Framework, even if I were to give significant weight to the benefits of market housing and even the affordable housing, which, as set out above, has not been secured in this particular case, the public benefits would not outweigh the great weight derived from the less than substantial harm imposed by Paragraph 199 of the Framework. Paragraph 203 of the Framework requires a similar balanced judgement in relation to non-designated heritage assets and given the shared context the outcome would be the same.
71. The Council cannot demonstrate a five year housing land supply, and housing related policies are out of date, something not in dispute. Consequently, Paragraph 11 (d) of the Framework is engaged. However, in undertaking the balancing exercise under Paragraph 202 of the Framework it is clear that the application of policies that protect areas or assets of particular importance provide a clear reason for refusing the development proposed and the presumption in favour of sustainable development would not apply.
72. It is clear from my findings on the main issues, that the proposal would have a harmful effect on the character and appearance of the area, including Worting Conservation Area, the setting of listed buildings and non-designated heritage assets, mix of housing types, biodiversity net gain and levels of multifunctional green space.
73. I acknowledge there would be a lack of harm to dormice habitat and that Policy SS3.10 of the LP does not include a balancing exercise of public benefits or heritage harm. It would not therefore be wholly consistent with the Framework. Consequently, harm derived from conflict with the policy would be reduced to carrying moderate weight.

74. Notwithstanding, even were I to have found a positive outcome from the Framework heritage balance, the overall and cumulative effect of the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the development plan and the Framework taken as a whole.

Conclusion

75. For the reasons given above, the presumption in favour of sustainable development would not apply in favour of the proposal. Consequently, there are no material considerations indicating that a decision should be taken otherwise than in accordance with the development plan where the proposal is in clear conflict as a whole. Accordingly, the appeal is dismissed.

Liam Page

INSPECTOR