



Appeal Decision

Site Visit made on 26 October 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2022

Appeal Ref: APP/P2114/W/21/3267345

**Land to the rear of Landfall, Egypt Esplanade, Cowes, Isle of Wight
PO31 8BS**

- 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 H Roe against the decision of Isle of Wight Council.
 - The application Ref 20/01308/FUL, dated 28 July 2020, was refused by notice dated 16 November 2020.
 - The development proposed is a detached dwelling.
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Decision

1. The appeal is allowed and planning permission granted for the erection of a detached dwelling at land to the rear of Landfall, Egypt Esplanade, Cowes, Isle of Wight PO31 8BS in accordance with the terms of the application, Ref 20/01308/FUL, dated 28 July 2020, subject to the conditions set out in the attached schedule.

Procedural Matters

2. During the course of the appeal the appellant submitted unilateral undertakings (UUs) for additional contributions towards mitigation for the recreational impacts associated with the proposed development on the Solent and Southampton Water Special Protection Area (SPA). These UUs are additional to that submitted with the application and are in line with the annual increase in the contribution required.
3. Also during the course of the appeal the Council suggested revised wording for a condition to ensure that there would be no adverse effects on the integrity of the SPA from additional nutrient discharge in the event that the appeal was allowed. The main parties and Natural England had the opportunity to comment further on the implications of the proposed development in this respect. I return to the matter of the SPA below.

Main Issues

4. The main issues are the effect of the proposal on the:
 - i) character and appearance of the area, with particular regard to the location of the appeal site within the Cowes Conservation Area;
 - ii) living conditions of the occupiers of neighbouring properties, with particular regard to privacy; and
 - iii) integrity of the Solent and Southampton Water SPA.

Reasons

Character and appearance

5. The appeal site is located at the western end of the Cowes Conservation Area (the CCA). In assessing the effect of the proposal I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CCA. The Framework sets out that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Great weight should be given to the conservation of designated heritage assets and any harm to or loss of significance of such an asset requires clear and convincing justification.
6. The CCA is divided into three character areas with the appeal site being within the Queen's Road Character Area. The character of this part of the CCA is summarised in the Conservation Area Appraisal as "*a varied but elegant residential area which has its roots in the early days of yacht racing in the Solent. The focus of the villas is the view over the water along with the facility to see and be seen on the promenade.*"
7. The Appraisal identifies space as a feature of this Character Area due to the characteristic size of the plots with dwellings in generous grounds. From my observations during my site visit I agree with this assessment. I also noted that the section of Egypt Esplanade in the vicinity of the appeal site is characterised by dwellings either set close to or set back from the Esplanade such that the street frontage varies.
8. The appeal site currently forms part of the large garden of 'Landfall', a substantial semi-detached dwelling towards the front of the plot close to the esplanade. The land rises from the Esplanade so that the southern part of the garden, including the appeal site, sits at a higher level than 'Landfall'. The site currently accommodates a large brick building with partial timber cladding and a concrete double garage. These buildings are accessed by an existing driveway off Egypt Hill to the east which would form the access to the proposed dwelling. To the south of this track is an area of woodland the majority of which is within the CCA whilst to the west of the site is Briary Court, a large retirement apartment complex, outside the CCA.
9. The generous garden of 'Landfall' is itself characteristic of the Queens Road Character Area and the trees and extensive shrubbery in the garden contribute significantly to the character and appearance of this Character Area as viewed from the Esplanade. The trees are protected by Tree Preservation Orders (TPO), both as an Area and, for two of the trees, as an individual TPO. The proposal follows the withdrawal of a previous application for a single detached dwelling that proposed the division of the garden of 'Landfall' from the Esplanade to the rear boundary, which was not favoured by the Council. The current scheme seeks to address this concern by retaining the full width of the existing garden to the north adjacent to the Esplanade.
10. Even with a smaller area, the proposed garden for the new dwelling would be reasonably generous, as would the retained garden for 'Landfall'. The proposed dwelling would not be markedly closer to the boundaries of the appeal plot than other dwellings in the vicinity to the boundaries of their plots. The distances between the proposed dwelling and the nearest properties of 'Landfall', 'Briary Court', 'Briary Cottage', 'Briary Lodge' and 'West Dormers'

- would not be harmfully out of keeping with the gaps between these existing properties and their nearest neighbouring properties.
11. Furthermore, the dwelling would be on part of the garden that already accommodates permanent buildings, which would be removed to accommodate the new dwelling. Neither of these buildings makes a significant positive contribution to the character and appearance of the CCA and so their removal would have at least a neutral effect on the CCA. Whilst significantly larger than these existing buildings, given the generous space that would remain around the dwelling and the distances to existing dwellings, the proposed dwelling would not result in a harmful intensification of built development.
 12. The proposed dwelling would necessitate the removal of a medium-sized ornamental tree within the site. The tree is categorised as Grade C; of low quality and value, in the Tree Survey and Arboricultural Implications Assessment submitted with the application, which the Council accepts. It does not make a significant contribution to the character and appearance of the CCA and so its removal would not be unduly harmful to that character or appearance.
 13. Otherwise, the dwelling has been sited to allow the retention of the majority of the existing trees. Its location to the rear of the garden would allow the retention of existing vegetation in the foreground as seen from the Esplanade, retaining the open frontage and green gap between 'Landfall' and 'Briar Lodge' and its verdant character and appearance. With appropriate boundary treatments that could be secured by a condition the sub-division of the existing plot of 'Landfall' would therefore not be unacceptably harmful to the character or appearance of the CCA.
 14. Furthermore, the proposal includes additional landscaping, which could be secured by a condition. The proposed dwelling would not wholly obscure the sylvan setting of the CCA to the south. Overall, therefore, the proposal would allow the retention of sufficient vegetation, including the protected trees, to maintain the contribution of this greenery to the character and appearance of the CCA.
 15. Whilst set back from the Esplanade, given that it would not be sited directly behind 'Landfall' and would be accessed by the driveway off Egypt Hill, the proposed dwelling would not be seen as backland development. Moreover, 'East Dormers' and 'West Dormers' are already set back into their plots on the higher ground with access via the driveway off Egypt Hill and gardens to the north. At the time of my site visit construction of new dwellings was underway in the grounds of Egypt House on the corner of Egypt Hill and the driveway, which were also visible from the Esplanade. Consequently, the location of the proposed dwelling would not be at odds with the pattern of development in the Character Area.
 16. The proposed dwelling would be at a higher level than the Esplanade but would be set back into the plot. The dwelling would have a similar roof line to 'East Dormers' and 'West Dormers' to the other side of 'Landfall' and its partner dwelling 'Hardwicke'. It would be seen in the context of the existing dwellings set back from the Esplanade and therefore, whilst it would be visible from the Esplanade, it would not be readily apparent, nor have a jarring impact from this public realm nor be harmful to the street scene.

17. The proposed dwelling has been designed to face towards the Esplanade with the elements either side of the entrance of a generally vertical proportion, features which the Conservation Area Appraisal notes as contributing to the overall appearance of the Queen's Road Character Area. Front-facing gables would reflect Briary Lodge which is neighbouring dwelling to the west of 'Landfall' and the approved new houses at Egypt House. The design of the dwelling would therefore not be harmfully out of keeping with other properties in the Character Area.
18. The site is within an existing garden with domestic paraphernalia in a residential area. I am not persuaded that the proposed dwelling would lead to an increase in such paraphernalia to the extent that would be harmful to the character or appearance of the CCA.
19. I therefore conclude that the proposed development would not be harmful to the character or the appearance of the Cowes Conservation Area, both of which would therefore be preserved. Accordingly, in this respect, the proposal would accord with Policies SP1, SP5, DM2, DM11 and DM12 of the Island Plan. These policies, amongst other things, protect character, including the special character of the Island's historic environments; require high quality design that complements the character of the surrounding area, particularly in Conservation Areas as defined in Conservation Area Appraisals; and seek to conserve landscape and seascape.

Living conditions

20. The proposed dwelling would be in an elevated position relative to 'Landfall', 'Briary Lodge' and 'Briary Cottage'. Whilst angled slightly away from 'Landfall', the proposed dwelling would have a direct line of sight to a first floor window in 'Briary Lodge'. Although the occupancy of Briary Cottage is currently restricted to a holiday let, during the lifetime of the proposed development permission could be granted for its use as a permanent residential dwelling. It is important to protect the living conditions of existing or potential future occupiers of both properties.
21. The distances between the proposed dwelling and the rear elevations of Briary Cottage, Briary Lodge and 'Landfall' at their nearest points would be comparable to or in excess of the existing distances between 'West Dormers' and 'Hardwicke' and between 'Briary Court and 'Briary Cottage'. There would therefore be no unacceptably harmful additional actual or perceived overlooking and consequent loss of privacy for the occupiers of 'Landfall', 'Briary Lodge' nor the potential future occupiers of 'Briary Cottage'. Given the distances between the proposed dwelling and these existing properties it would not be unacceptably overbearing for the occupiers of these existing dwellings, notwithstanding its elevated position.
22. I therefore conclude that the proposed development would not be unacceptably harmful to the living conditions of the occupiers of 'Landfall' and 'Briary Lodge' or those of the potential future occupiers of 'Briary Cottage'. The Council's reason for refusal on this matter cites Policies DM2 and DM12 of the Island Plan. However, neither of these policies specifically protect the living conditions of the occupiers of neighbouring properties. I find no conflict in this respect with paragraph 130 c) of the National Planning Policy Framework (the Framework) which requires planning decisions to ensure that developments create places with a high standard of amenity for existing and future users.

The Solent and Southampton Water SPA

23. The SPA is one of several designated habitats sites in the Solent¹. The mudflats, shingle and saltmarshes of these sites provide essential feeding and roosting grounds for an assemblage of internationally important numbers of water birds which together comprise the qualifying features of the SPAs. The conservation objectives of the SPAs are, in summary, to ensure that the integrity of the sites is maintained or restored in order to protect the habitats and the birds that depend on them.
24. Natural England (NE) has advised that nutrients (nitrogen) discharged from sewage treatment works into the Solent is causing eutrophication of the water environment. This has adverse impacts on the bird populations. Moreover, increased recreation by the occupiers of new housing around the Solent visiting the coast for leisure has the potential to cause more disturbance to the birds, threatening their survival and thus the achievement of the conservation objectives for the SPA.
25. The proposal would result in an additional dwelling. No nutrient budget has been provided to demonstrate that the proposed development would at least be nitrogen-neutral. Therefore, taking a precautionary approach, I have to proceed on the basis that the development would lead to additional nutrient discharge.
26. However, the appellant has provided confirmation from Southern Water that the wastewater from 'Landfall' discharges to the Sandown Waste Water Treatment Works (WWTW), the treated water from which is not discharged into the SPA. The Council's "Position Statement Nitrogen neutral housing development" indicates that both the Council and NE consider that where this is the case, likely significant effects on the SPA can be screened out.
27. A mechanism is necessary to ensure that the wastewater from the proposed development would be treated at the Sandown WWTW as indicated. In the event the appeal is allowed, the Council has suggested a pre-commencement condition requiring foul drainage from the proposed development to be connected to the public sewer and be served by the Southern Water Wastewater Treatment Works (WWTW) at Sandown. NE has confirmed that in its view the revised condition would provide sufficient ecological certainty that likely significant effects to the designated sites would not arise from the proposal (email dated 25 January 2022).
28. I consider that the Council's suggested condition would meet the six tests for conditions in paragraph 56 of the Framework. Therefore, given the endorsement of the condition by NE, I am satisfied this condition would provide reasonable scientific certainty that the proposed development would not have a likely significant effect on the integrity of the Solent SPA from additional nutrient discharge.
29. Nevertheless, the appeal site is within the 5.6 km zone of influence of the SPA and the future occupiers of the proposed dwelling would be likely to use the coast for recreation. Therefore, in combination with other plans and projects there would be a likely significant effect on the SPA from additional recreational

¹ Solent and Southampton Water SPA and Ramsar Site, Portsmouth Harbour SPA and Ramsar Site, Chichester and Langstone Harbours SPA and Ramsar Site and Solent Maritime Special Area of Conservation

activity. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require a decision maker to undertake an appropriate assessment (AA). In undertaking the AA I can have regard to mitigation measures.

30. The Solent Recreation Mitigation Strategy (2017) (SRMS) sets out measures for the mitigation of recreational activity including a team of rangers to help coastal communities and visitors understand the importance of the different bird species and the impact of disturbance. As this package of measures has been endorsed by NE, I am satisfied that they would provide adequate mitigation for the likely significant recreational effect of the proposal on the integrity of the SPA.
31. Both the appellant's original UU and subsequent additional UUs contain obligations for the payment of a contribution to the SRMS. The UUs meet the tests of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and of paragraph 57 of the Framework. I am satisfied therefore that these UUs secure adequate mitigation for the recreational effect of the proposal on the SPA.
32. I therefore conclude that with the condition suggested by the Council should permission be granted there would not be a likely significant effect on the integrity of the SPA from additional nutrient discharge. The appellant's UUs would ensure adequate mitigation for the recreational impacts associated with the occupancy of the proposed dwelling. The development would therefore not adversely affect the integrity of the Solent and Southampton Water SPA.
33. Accordingly, in this respect, the proposal would comply with Policy DM12 of the Island Plan Isle of Wight Core Strategy (2012) (the Island Plan) which, amongst other things, expects development proposals to protect the integrity of international biodiversity designations. It would also comply with the Habitats Regulations and the policies of the Framework on biodiversity, including paragraph 180 a).

Other Matters

Affordable housing

34. Policy DM4 of the Island Plan sets out that development proposals will be expected to provide financial contributions towards affordable housing for developments of 1-14 units in Key Regeneration Areas. The Council's Affordable Housing Supplementary Planning Document 2017 (SPD) sets out the justification for such a contribution, identifying the high overall housing requirement per annum from households requiring some form of affordable housing and the acute housing affordability issue on the Island.
35. The SPD also sets out the formula for calculating the level of contribution based on a percentage of the value of a development above a threshold value and the mechanism for collecting contributions through planning obligations. The appellant's original UU contains an obligation for the payment of a contribution towards the provision of affordable housing.
36. However, the approach of Policy DM4 is not consistent with the Framework which sets out that such contributions should not be sought for residential developments that are not major developments (10 houses or more). The Council has not provided any evidence other than the SPD to justify its

requirement nor to demonstrate how the contributions are delivering affordable housing on the Island.

37. Therefore, notwithstanding the appellant's willingness to pay the contribution, on the basis of the evidence before me, I consider the approach to affordable housing provision set out in the Framework is a material consideration that outweighs the requirements of the development plan in this case. I am not satisfied that the obligation would meet the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework in respect of this contribution. I have therefore not taken the obligation relating to affordable housing into account in my decision.

Listed buildings

38. Two Grade II listed buildings are located on Egypt Esplanade to the east of 'Landfall'; the mid-18th century Egypt House and a sculpture of a lion sejant on a plinth. In considering whether or not to grant planning permission I must have special regard to the desirability of preserving the settings of these listed buildings. In addition, the Framework recognises that development within the setting of a heritage asset can harm its significance.

39. However, the wider setting of these assets principally comprises the Solent to the north, Egypt Esplanade and existing residential development to the south of the Esplanade. The proposed dwelling would not impinge on the relationship of the listed buildings to the water or Esplanade and would retain the residential element of their setting. It would also be separated from these listed buildings by intervening existing built development and would not intrude in any public views to or from the assets, thus not harming the ability to appreciate their significance. Consequently, the proposal would preserve the setting of these listed buildings.

Other considerations

40. The site is within the Medina Valley Key Regeneration Area Settlement Boundary such that the principle of residential development is acceptable and in accordance with Policies SP1, SP2 and SP7 of the Island Plan to which the appellant refers.
41. Although it is stated that the appellant intends to self-build the house, I have nothing before me to secure the proposed development as a self-build scheme and therefore have not taken this into account in my decision.

Planning Balance

42. The Council cannot demonstrate a 5-year supply of deliverable housing land. The latest figure available to me is from April 2018, when the supply was 83.15% of that necessary to demonstrate a 5-year supply. Furthermore, the 2021 Housing Delivery Test measurement of 58% shows that the delivery of housing on the Island is substantially below its housing requirement.
43. Paragraph 11 d) of the Framework is therefore engaged and Policies SP1, SP5, DM2, DM11 and DM12 of the Island Plan are deemed to be out of date. Nevertheless, the requirements of these policies in respect of the character of the area, heritage and biodiversity are broadly consistent with the Framework. Therefore, in accordance with paragraph 219 of the Framework, I accord the

compliance of the proposed development with the relevant parts of these policies significant weight in my determination.

44. Paragraph 11 d) sets out that planning permission should be granted except in two specific circumstances. The first is that the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 confirms that these policies include those relating to designated heritage assets and habitats sites.
45. I have concluded above that the proposed development would not be harmful to the character or the appearance of the Cowes Conservation Area nor adversely affect the integrity of the Solent and Southampton Water SPA. Neither therefore provides a clear reason for refusing the scheme proposed.
46. I therefore need to consider the second circumstance; if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. For the reasons given above, I find no adverse impacts that would conflict with the policies of the Framework in respect of the character of the area, heritage, biodiversity or other considerations.
47. As a single dwelling, the social and economic benefits of the proposal would be minimal. Nevertheless, the proposal would represent a contribution to the housing supply on the Island. The Framework sets out the Government's objective of significantly boosting the supply of homes and requires great weight to be given to the benefits of using suitable sites within settlements for homes. It also recognises that small sites can make an important contribution to meeting the housing requirements for an area and encourages the effective use of land.
48. I therefore find that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of an additional dwelling when assessed against the policies of the Framework taken as a whole. Accordingly, the presumption in favour of sustainable development applies to the proposal.

Conditions

49. In addition to the standard time limit for commencement, the Council has suggested other conditions in the event that permission is granted. I have assessed these against paragraph 56 of the Framework, revised them in the interests of precision and concision and reordered them in accordance with the Planning Practice Guidance.
50. A condition requiring compliance with the approved plans is necessary in the interests of certainty. A drainage scheme is necessary to ensure that the site is suitably drained and to prevent harmful impacts on the Solent designated habitats sites. Conditions regarding materials, landscaping, tree protection, and boundary treatment are necessary in the interests of the character and appearance of the area. A condition regarding ground conditions is necessary to ensure that the proposed development is not at risk.
51. Drainage, landscaping, tree protection and ground conditions need to be pre-commencement conditions to ensure that the development is undertaken in a satisfactory manner. The appellant has confirmed agreement to these conditions (email dated 25 March 2022).

52. Ecological mitigation and enhancement measures are necessary in the interests of biodiversity. The provision of parking and turning space is necessary in the interests of the safe and convenient use of the highway.

Conclusion

53. I have found that the proposal would comply with the policies of the development plan. There are no considerations, including the policies of the Framework taken as a whole, that indicate that a decision should be made other than in accordance with the development plan.

54. For this reason, and having regard to the other matters raised, I conclude that the appeal should be allowed and planning permission granted.

Martin Small

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from date of this decision.
- 2) The development hereby permitted shall only be carried out in complete accordance with the details shown on the submitted drawings; D1 (Site and Location Plans), D2 (Floor Plans and Elevations) and D3 (Elevations).
- 3) No development shall take place until full details of a soft landscape scheme for the site has been submitted to and approved in writing by the local planning authority. These details shall include a schedule of plants, noting species, plant sizes and proposed numbers/densities, planting methodology and an implementation programme. Planting shall be carried out in accordance with the agreed details. Any trees or plants that die, are removed become seriously damaged or diseased within 5 years of planting are to be replaced in the following planting season with specimens of a like size and species unless the local planning authority gives written consent to any variation.
- 4) No development shall take place until an Arboreal Method Statement has been submitted to and agreed in writing by the local planning authority detailing how the potential impact to trees will be minimised during construction works, including details of protective tree fencing to be installed for the duration of construction works. The agreed method statement will then be adhered to throughout the development of the site.
- 5) No development shall take place until a scheme for the drainage and disposal of surface and foul water from the development hereby permitted has been submitted to and approved in writing by the local planning authority. Foul drainage shall be connected to the public sewer and shall be served by the Southern Water Wastewater Treatment Works (WWTW) at Sandown.

Development shall be carried out in accordance with the approved scheme, which shall be completed prior to the occupation of the dwelling hereby permitted and be retained thereafter.

- 6) No development shall take place until a survey of ground conditions has been undertaken in accordance with a scheme submitted to and approved in writing by the local planning authority; the results provided to the local planning authority; and a scheme of remedial, preventive and precautionary measures to deal with the stability of the site and adjoining land has been submitted to and approved in writing by the local planning authority. The scheme as approved shall be fully implemented and completed before the dwelling hereby permitted is first occupied.
- 7) The following ecological mitigation and enhancement measures shall be applied and adhered to throughout the development of the site and, where physical enhancement measures are provided, they shall be retained as approved thereafter:
 - Works, including demolition and vegetation clearance, shall take place outside of the bird nesting season (April to August inclusive) or overseen by a competent ecologist and any nesting birds allowed to fledge prior to works continuing.
 - Removal of brash and rubbish shall take place outside of the hedgehog hibernation season (November to March).
 - Any new close boarded fencing shall include gaps suitable for hedgehogs to pass.
 - No part of the building hereby approved shall be constructed above foundation level until details of new nesting and roosting sites for birds and bats within the new dwelling have been submitted to and approved in writing by the local planning authority. These shall be provided prior to occupation of the dwelling.
- 8) Notwithstanding condition 2, no part of the building hereby approved shall be constructed above foundation level until details of the materials and finishes to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) The development shall not be occupied until boundary treatments have been provided in accordance with details of their positions, design, materials and type submitted to and approved in writing by the local planning authority. The boundary treatments shall thereafter be retained as approved.
- 10) The dwelling hereby permitted shall not be occupied until space has been laid out within the site based on the principles as shown on Plan D1 (Plot Plan) and surfaced in accordance with details that have been submitted to and approved by the local planning authority in writing for two conventional motor vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The space shall not thereafter be used for any purpose other than that approved in accordance with this condition.

End of Schedule