



Appeal Decision

Site visit made on 12 April 2022

by **James Blackwell LLB (Hons) PgDip**

an Inspector appointed by the Secretary of State

Decision date: 13th June 2022

Appeal Ref: APP/P2114/W/21/3278577

**Land to the north of Greenacres, Baring Road, Cowes, Isle of Wight
PO31 8ER**

- 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 Roy Churchill of Meadow View Developments (IW) Ltd against the decision of Isle of Wight Council.
 - The application Ref 20/02026/FUL, dated 18 November 2020, was refused by notice dated 18 March 2021.
 - The development proposed is 6 detached dwellings, formation of vehicular accesses, parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for 6 detached dwellings, formation of vehicular accesses, parking and landscaping at Land to the north of Greenacres, Baring Road, Cowes, Isle of Wight PO31 8ER in accordance with the terms of the application, Ref 20/02026/FUL, dated 18 November 2020, subject to the conditions set out in the Schedule to this decision.

Preliminary Matters

2. Since determination of the planning application, the 2019 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the current version, published in July 2021.
3. The site is within the 5.6km Zone of Influence (ZOI) of the Solent and Southampton Water Special Protection Area (Solent SPA), which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not forming part of the Council's reason for refusal, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the Solent SPA. It is therefore necessary to consider this matter as a main issue.
4. Policy SP1 of the Isle of Wight Core Strategy (2012) (Core Strategy) is clear that new housing will not be supported unless it is within or immediately adjacent to defined settlements. Policy SP1 goes on to list Medina Valley, and more specifically Cowes, as one of these settlements. Given that the appeal site is located immediately adjacent to the settlement boundary of Cowes, the

location of the proposed development would be consistent with the spatial strategy for the district, and therefore policy compliant in this regard.

5. Policy H1 of the Gurnard Neighbourhood Development Plan (2017) (GNDP) also supports the principle of new housing in locations immediately adjacent to defined settlements, but only where it is necessary to meet an identified shortfall in housing delivery. Given that the Council cannot demonstrate a 5-year supply of deliverable housing land and has failed to meet the Housing Delivery Test, this identified shortfall is established. As such, the development would also be consistent with the provisions of Policy H1 of the GNDP. I have approached the decision on this basis.

Main Issues

6. In this context, the main issues are the effect of the proposed development on:
 - the character and appearance of the area; and
 - the integrity of the Solent SPA.

Reasons

Character and Appearance

7. The appeal site is located on the western side of Baring Road, and sits adjacent to an existing dwelling, being no. 211 Baring Road. There are other residential homes running in a linear formation along the opposite side of the road. These are mixed in design, and whilst they mostly comprise bungalows and chalet bungalows, they do also include some modest two-storey properties. Whilst the area is therefore partly residential in character, the site itself is a semi-rural greenfield plot, which borders the open backdrop of the Jordan Valley to the west.
8. The proposed development would introduce 6 detached homes within the appeal site, which would reflect the linear pattern of built form on the opposite side of the road. They would be broadly similar in size, height and scale to surrounding properties, which would allow them to assimilate properly with these neighbouring properties. Moreover, as three different property designs are proposed (with no two adjacent properties being the same), the variety in house types would reflect the mixed design of the houses opposite, ensuring effective integration with the wider street scene.
9. Whilst the new houses would occupy greenfield land which contributes to the open backdrop over the Jordan Valley, the modest scale and sympathetic siting of the proposed new dwellings would limit their impact in terms of the open landscape to the west. Indeed, when viewed from Tuttons Hill, which offers one of the key views over Jordan Valley, the new dwellings would be read within the context of the existing development at the southern end of Baring Road (on both sides), which means they would not unduly interrupt the views in this direction. Whilst the impact would be felt more keenly from the southern end of Baring Road, there would still be a substantial gap between the northern-most dwelling comprised in the proposal and the Dottens Farm development further north, which means the open backdrop of the Jordan Valley would be substantively preserved, and could still be readily appreciated from this location.

10. Moreover, given that much of Baring Road is already a predominantly developed location, the proposed development, which would sit opposite existing houses, would not make any meaningful difference to any actual or perceived coalescence between Gurnard and Cowes. Indeed, the wide and substantial open gap of Jordan Valley would remain, ensuring any substantive coalescence between the two is prevented.
11. For these reasons, I am satisfied that the proposed development would not cause undue harm to the character and appearance of the area. It would be consistent with Policies DM2 and DM12 of the Core Strategy (2012), which seek to ensure new development protects, conserves or enhances the character of existing environment and landscape, whilst also allowing change to take place. Whilst Policy E1 of the Gurnard Neighbourhood Development Plan (2016 - 2027) does say development within the Jordan Valley should be resisted, the development would nonetheless remain consistent with the thrust of this Policy, which is to maintain the open gap afforded by the valley, and to prevent coalescence between Gurnard and Cowes.

Integrity of SPA

12. The Solent SPA is afforded protection under the Habitats Regulations owing to its importance to wildlife, as it plays host to over 90,000 waders and waterfowl, including 10% of the global population of Brent Geese. These birds come from as far as Siberia to feed and roost, before returning to their summer habitats to breed. The Solent SPA was designated, predominantly to protect these over-wintering birds.
13. The proposed development has the potential to lead to increased recreational use of the Solent SPA, owing to the proposed additional residential units. In turn, the development could result in increased disturbance to the protected habitats and species found in this protected area, due to the corresponding increase in visitor numbers. The proposal would therefore have the potential for a year-round increase in recreational pressure on the Solent SPA, which, when considered in combination with other development, could have a significant effect on the Solent SPA. As competent authority, I must therefore consider whether measures could be put in place to avoid or mitigate against such impact.
14. The Council is a member of the Solent Recreation Mitigation Partnership, which has procured a strategic solution to help mitigate against the potential effects from new housing. This mitigation is achieved through financial contributions towards the Solent Bird Aware Strategy (SBAS), which should be secured via planning obligation. The SBAS includes a series of management measures which actively encourage all coastal visitors to enjoy their visits in a responsible manner. These include education initiatives, preparation of codes of conduct, provision of new or enhanced greenspaces as an alternative to visiting the coast, site specific projects to better manage visitor numbers and provide secure habitats for birds, as well the employment of coastal rangers and other officers to facilitate the implementation of these objectives.
15. In terms of effectiveness, the Council's latest Annual Report¹ indicates that the mitigation measures set out in the SBAS are being implemented successfully, and in the year preceding the report, the recruitment of a full Seasonal Ranger

¹ Solent Recreation Mitigation Partnership, Seventh Annual Report on Implementation (June 2021)

team was approved to continue implementing strategy objectives. Moreover, the SRMP has received recognition for its work in deploying the strategy, winning multiple prestigious awards for its campaign. Natural England has also confirmed during consultation that, subject to payment of the required financial contributions towards the SBAS, it is satisfied that the proposal will properly mitigate against the potential recreational impacts of the development on the Solent SPA.

16. A number of signed unilateral undertakings (dated 21 February 2021, 19 December 2021 and 21 April 2022) have been submitted by the appellant in connection with this appeal. (Collectively, these shall be referred to as the Planning Obligations). Together, these would secure a financial contribution of £563 for each 2 bedroom dwelling, £735 for each 3 bedroom dwelling and £864 for each 4 bedroom dwelling. These payments reflect the latest set of figures outlined in the Council's Solent Recreation Mitigation Strategy – Status Note.
17. Paragraph 57 of the Framework and Regulation 122 of the CIL Regulations² set out three statutory tests that planning obligations must meet. Firstly, they must be necessary to make development acceptable in planning terms, secondly, they must be directly related to the development, and thirdly, they must be fairly and reasonably related in scale and kind to the development.
18. I am satisfied that the financial contributions secured are necessary to make the proposed development acceptable in planning terms. The contributions would help fund the provision of the mitigation measures set out in the SBAS, including the employment of coastal rangers to implement the measures. Given the location of the development within the 5.6km ZOI of the Solent SPA, I consider that the contributions are directly related to the appeal scheme. Finally, as the contributions relate to a standard charge based on the scale and type of residential development proposed, I consider them to be fairly and reasonably related to the proposal in scale and kind. On this basis, the mitigation contributions in the Planning Obligations would meet the requirements of the Framework and the CIL Regulations, and I therefore give them significant weight in the determination of this appeal.
19. Pulling these factors together, I am satisfied that with the proposed mitigation secured through the Planning Obligations, the development would not have an adverse effect on the integrity of the Solent SPA. The development would therefore comply with the Conservation of Habitats and Species Regulations 2017 (as amended).
20. The development is also within the catchment area of the Sandown Wastewater Treatment Works (WwTW), which discharges effluent into the English Channel. Evidence has been submitted by the appellant to demonstrate that drainage from the development will be processed at the WwTW. In line with the Council's Position Statement³ and its agreed approach with Natural England, this means there is no requirement for the development to demonstrate nutrient neutrality, as any associated impact can be reasonably excluded. I have no reason to disagree with this assessment.

² The Community Infrastructure Levy Regulations 2010 (as amended)

³ Isle of Wight Council Position Statement: Nitrogen neutral housing development (April 2020)

Other Matters

21. As mentioned above, the Council cannot demonstrate a five-year supply of deliverable housing land and has failed to meet the Housing Delivery Test. This means its policies relating to delivery of housing are out of date. Paragraph 11(d)(ii) of the Framework (the "tilted balance") is therefore engaged, which says planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
22. Paragraph 130 of the Framework is explicit that new development should function well and add to the overall quality of an area. It highlights that development should be visually attractive and sympathetic to local character and surrounding built environment. The content of the Framework therefore reflects the overriding design and character principles of the Core Strategy in terms of new residential development, against which I have found no harm. Moreover, the Framework has a clear objective of boosting housing, so the contribution of 6 dwellings to the Council's housing supply within a sustainable location, would be a significant benefit of the scheme.
23. Given the lack of identified harm and the significant benefit of 6 new dwellings, I am satisfied that there would be no adverse impacts of the development which would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The presumption in favour of sustainable development therefore applies in this instance.
24. As well as securing mitigation against any impact on the Solent SPA, the Planning Obligations also secure an affordable housing contribution. This contribution reflects the requirements of Policy DM4 of the Core Strategy, which requires small-scale housing developments to make financial contributions towards the delivery of off-site affordable housing within the Council's area.
25. In terms of the statutory tests, I am satisfied that the affordable housing contribution is necessary to make the development acceptable in planning terms, and is directly related to the development. This is because Policy DM4 expects all housing developments to make provision for affordable housing, whether on-site or off-site. Given that the contribution is calculated using a standard formula which accounts for the market value of the development, I also consider the contribution to be fair and reasonable in scale and kind. The affordable housing contribution therefore meets the relevant statutory tests, and carries significant weight in my decision.
26. Whilst I note residents' comments regarding housing need and the availability of sites elsewhere on the Island, the Council's inability to demonstrate a five-year supply of deliverable housing land negates any requirement to demonstrate housing need. In terms of concerns regarding increased pressure on the highways network and local services, I am satisfied that the addition of 6 modest units will not put undue pressure on either of these. As set out above, whilst no affordable homes will be delivered on site, the appellant will be required to pay a contribution towards off-site affordable housing, thereby contributing to affordable housing provision in the wider locality. Finally, the appellant will be required to protect a wildlife corridor to the rear of the site, thereby mitigating against any impact of the development on ecology.

Conditions

27. The Council has supplied a list of suggested conditions which I have reviewed and updated in line with Planning Practice Guidance and the Framework.
28. I have included a plans condition (condition 2) for certainty over the development permitted. Details of soft landscaping, including details of the buffer zone/wildlife corridor must be submitted to and approved by the Council prior to commencement (condition 3). This needs to be a pre-commencement condition, to ensure the biodiversity of the wildlife corridor is sufficiently protected throughout the course of development (and thereafter). Similarly, details of tree protection measures must also be approved pre-commencement, so that the retained trees and hedgerow are adequately protected throughout the course of construction (condition 4).
29. Details of foul and surface water drainage must be submitted to and approved by the Council prior to commencement (condition 5). This is needed to ensure drainage arrangements are properly factored into the proposals at the outset of development. This condition also prescribes the WWTW to which effluent must be discharged, which in turn ensures the development need not demonstrate nutrient neutrality. Given this condition, I do not consider any additional conditions relating to highways drainage and/or surface water drainage are necessary.
30. Whilst not suggested by the Council, I have included a condition requiring a Construction Management Plan to be submitted to and approved by the Council prior to commencement (condition 6). This is to ensure neighbouring amenity is protected as far as possible throughout the development, as well as minimising any disruption to the nearby road network.
31. I have included a condition requiring details of external materials to be submitted to and approved by the Council, to ensure the new houses properly integrate with the street scene (condition 7). Details of boundary treatments and refuse storage must also be submitted and approved prior to their installation (condition 8). This is to ensure these components are properly factored into the development proposals, thereby preserving the attractive qualities of Baring Road.
32. Car parking spaces must be laid out in accordance with approved details prior to occupation (condition 9). This will ensure adequate parking provision is provided, to preserve highway safety in the area.
33. Plots 3 and 5, both of which include external terraces, must include appropriate privacy screens to minimise any potential for overlooking, thereby preserving the privacy of neighbouring properties (condition 10).
34. I have restricted permitted development rights in respect of boundary treatments, due to the importance of preserving the wildlife corridor to the rear of the properties (condition 11). Permitted development rights in respect of fenestration have also been restricted to ensure neighbouring amenity (specifically privacy) is adequately protected (condition 12). Finally, restrictions on permitted development rights relating to alterations, enlargements and outbuildings are also justified in this instance, to ensure the impact of the development on the open gap to its rear, and views over the Jordan Valley, is minimised as far as possible (condition 13).

Conclusion

35. For the reasons given above, and having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal should be allowed.

James Blackwell

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: 1807(AP)00.02&03 Rev A/1 (Block Plan and Site Location); 1807(P)10.01 (Plots 1&6); 1807(AP)10.03 (Plot 2); 1807(P)10.02 (Plots 3&5); 1807(AP)10.04 (Plot 4); 1807(AP)00.0X (Rev C) (Site Layout – Drainage); 1807(AP)00.01 Rev C (Site Layout/String Elevation); and 1807(AP)P2-50.01 Rev C (Site/plan Cross Section).
- 3) No development shall commence until there shall have been submitted to and approved in writing by the Local Planning Authority a scheme of soft landscaping. The scheme shall include details of the buffer zone/wildlife corridor and its proposed management, a schedule of plants (noting species, sizes and proposed numbers and densities), planting methodology and a timetable for implementation. The scheme shall be fully implemented in accordance with the agreed details and timetable. Any trees or plants which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 4) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (Tree Protection Plan) and the appropriate working methods (Arboricultural Method Statement) have been submitted to and approved in writing by the Local Planning Authority. The Tree Protection Plan and Arboricultural Method Statement shall be implemented as approved, and retained throughout construction of the development.
- 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 at Sandown. Development shall be carried out in accordance with the approved scheme, which shall be completed prior to the occupation of the dwellings hereby permitted, and retained thereafter.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by the Local Planning Authority. The CMS shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction; and
 - delivery, demolition and construction working hours.

The approved CMS shall be adhered to throughout the construction period of

development.

- 7) Before any work above ground commences, samples or details of the materials to be used in the construction of their external surfaces (to include details of mortar colour, roof materials and rainwater goods) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved samples or details and retained thereafter.
- 8) No boundary treatments or refuse storage shall be installed until full details (including design, materials and position) have been submitted to and approved by the Local Planning Authority. The boundary treatments and refuse storage shall be fully implemented in accordance with the approved details prior to occupation of the development, and retained thereafter.
- 9) No dwelling hereby permitted shall be occupied until the car parking spaces and turning area to serve that dwelling, have been laid out in accordance with plans 1807(AP)00.0X Rev C and 1807(AP)00.01 Rev C, so that vehicles can enter and leave the site in forward gear. The car parking spaces and turning area shall thereafter be kept available at all times for those purposes.
- 10) Prior to occupation of Plots 3 and 5 of the development hereby permitted, their respective external terraces shall be completed in accordance with drawing 1807(P)10.02 (Plots 3&5). The northern and southern elevations of each projecting terrace shall include a 1.5-metre-tall privacy screen. The partially enclosed terrace of Plot 3 shall include a 1.7-metre-tall privacy screen on its southern elevation and the partially enclosed terrace of Plot 5 shall include a 1.7-metre-tall privacy screen on its northern elevation. In each case, the privacy screens shall comprise obscured glass that accords with level five obscurity as shown on the Pilkington textured glass privacy levels (or other equivalent glass supplied by an alternative manufacturer).
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no fencing, walls or other means of enclosure shall be constructed.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no windows or dormer windows shall be constructed.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development within Classes A to E of Part 1 of Schedule 2 to that Order shall be carried out.

End of Schedule