



Appeal Decision

Site visit made on 17 May 2022

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2022

Appeal Ref: APP/P2114/W/21/3285500

Land adjacent to 403 Newport Road, Cowes, PO31 8PP

- 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 Alan & Ian Jones against the decision of Isle of Wight Council.
 - The application Ref 19/00677/OUT, dated 16 July 2019, was refused by notice dated 30 September 2021.
 - The development proposed is outline permission for a residential development of 4no. two storey detached dwellings with shared highway access on land to the west of Newport Road.
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Decision

1. The appeal is allowed and outline permission is granted for a residential development of 4no. two storey detached dwellings with shared highway access on land to the west of Newport Road, on land adjacent to 403 Newport Road, Cowes, PO31 8PP in accordance with the terms of the application, Ref. 19/00677/OUT, dated 16 July 2019, and subject to the conditions listed in the Annex to this decision.

Procedural Matters

2. I have adopted the description of development as set out in the decision notice but removed the wording in brackets. I have also had regard to the fact that the original application sought outline planning permission for five two storey detached dwellings, which was revised to four two storey detached dwellings during the determination of the application.
3. The application which is the subject of this appeal seeks outline planning permission with all matters reserved for future determination, but is accompanied by an indicative proposed site layout plan showing the provision of four two storey detached dwellings as well as a shared highway access from Newport Road. I have determined the appeal on this basis.

Main Issue

4. The main issue is whether the proposed development would represent an underdevelopment of the appeal site contrary to the relevant policies of the development plan and National Planning Policy Framework (July 2021) (Framework) which require development proposals to optimise and make effective use of land.

Reasons

5. The appeal site is located on the western side of Newport Road and comprises an open parcel of grassland. The northern boundary of the site abuts the side curtilage of 403 Newport Road (No.403) beyond which are further fields, a farmhouse and then the rear gardens of the properties in Oxford Street. The land (fields) that surround the farmhouse, referred to as land to the rear of 391 Newport Road, benefits from outline planning permission for some 66 dwellings (Council ref. P/00823/18).
6. To the east of the appeal site and on the opposite side of Newport Road is a ribbon development of properties comprising a mixture of bungalows, chalet bungalows and some two store properties, all of which are set back from the road and include individual driveways leading to off street parking. The southernmost property, within this ribbon, is 424 Newport Road and the land to the south benefits from planning permission for two detached dwellings (Council ref. 20/01100/FUL).
7. The Council's Statement of Case confirms that in view of the presence of existing ribbon development in the area and other development commitments, they do not object to the principle of residential development on the appeal site, either in respect of its location and accessibility or in terms of its potential visual impact. The Council do have concerns, however, with the density of the proposed development and contend that this would not optimise the full potential of the appeal site.
8. It is clear from the submitted evidence that the appeal scheme is the result of extensive discussions between Council Officers and the Appellant, at both the pre-application stage and during the determination of the application. Those discussions considered various development scenarios for the site, including schemes for a larger number of units to that now proposed. Even so, these schemes were discarded, for several reasons, in favour of the proposed scheme for four detached dwellings.
9. Given the above and based on the evidence before me and my observations on site, I consider the form, layout and quantum of development proposed to be acceptable and appropriate for the appeal site. In this respect, I agree with the Appellant that the linear design approach adopted and the emphasis on the provision of detached two storey dwellings would be consistent with the existing pattern of development to be found in the area, specifically to the east of the appeal site. The proposed layout would follow the prevailing pattern of development and I am satisfied that it would thus sit comfortably on the appeal site and within its local context, mirroring the character and appearance of existing development and preserving its landscape setting.
10. Whilst I accept that the proposed layout is indicative, it demonstrates the ability to bring forward a development that retains the existing building line established by No.403 to the north and secures a similar set back, from Newport Road, as the existing properties opposite. The proposed layout would also have regard to and respond to the constraints of the appeal site, including the need to retain existing mature trees and hedgerows, secure a high quality landscape setting, as well as the ecological constraints that arise from, in particular, the requirement to relocate and maintain existing Badger setts and incorporate an appropriate buffer zone to protect these and other ecological interests.

11. I see no reason as to why, at the reserved matters stage, a high quality and well landscaped development cannot be secured, which would assist in retaining and emphasising the semi-rural location of the appeal site on the edge of Cowes. The linear form of the proposed development would, in this respect, provide an appropriate transition from the more densely built up areas of Cowes, to the north, including the commitment for some 66 dwellings, to the more open and largely undeveloped countryside that lies beyond the appeal site to the south. Indeed, it is not uncommon to find this form of linear (ribbon) development on the outskirts of existing settlements, where the low density results in a softer feel to the urban edge and limits the encroachment of new development into the open countryside.
12. Whilst the Council contend that the appeal site could accommodate a larger number of smaller units and mix of dwellings sizes, no substantive evidence has been submitted to support that statement. Although the Council have provided a comparison of the density of the appeal site with existing groups of ribbon development, that evidence does not provide in itself support for their contention that the potential of the site is not being optimised. In addition, their analysis appears to ignore the constraints that apply to the appeal site including, as I highlighted above, the need to preserve existing trees, hedgerows and various ecological interests, as well as the need to provide a shared access to Newport Road that complies with current highway standards.
13. Moreover, a higher density development of smaller units would, in my judgement, result in a more urbanised development, due to the likely need for a larger built form, additional parking and hardstanding and other residential paraphernalia that smaller units often generate. In view of this and for the reasons given above, a higher density of development would, in my view, be inappropriate in this location and would be out of keeping with the character and appearance of the area. This finding is supported by the discussions that took place at the pre-application stage and during the determination of the application, where, as the Appellant points out, Council Officers resisted proposals for a larger development on the grounds that this would be too urban in its appearance.
14. I am satisfied, therefore, that the indicative proposals for four dwellings would make optimum and effective use of the appeal site and represents an appropriate scale and density of development given the sites existing built context, constraints and location on the outskirts of Cowes.
15. The Council's reason for refusal contends that the proposal would not be compliant with policy DM2 of the Isle of Wight Core Strategy & Development Management Development Plan Document (March 2012) (IWCS). For the reasons given above, that is not a view I share. Indeed, the opening to this policy states that the Council will support proposals for a high quality and inclusive design to protect, conserve and enhance the existing environment, whilst allowing change to take place. For the reasons given above, the appeal proposal would comply with those aims. The sentence continues by emphasising that the Council will also promote a robust design process and pre-application discussions. It is clear from the evidence before me that the Appellant fully engaged with these requirements, which led to the submission of the appeal scheme and its revision during the application process.

16. Furthermore, criterion 2 to Policy DM2, in emphasising the need for new development to optimise the potential of sites, states that in doing so development must have regard to existing constraints such as adjoining buildings, topography, views, hedges, trees, wildlife corridors and other features that contribute to the character of the area. As I have found, the proposed layout has, in my view, had regard to and responded positively to the appeal sites constraints and would secure, therefore, a level of development that optimises the sites potential.
17. Whilst the Framework post-dates the adoption of the IWCS, paragraphs 119 and 124 contain similar advice in stating that planning decisions should promote the effective use of land in meeting the need for new homes, but it also states that account must be taken of the desirability of maintaining an area's character and setting, which I have found the appeal proposal would do. It is also notable that whilst paragraph 125 of the Framework refers to the use of policies on density for different parts of a local plan's area, neither policy DM2 nor its supporting text contain any reference to the densities that might be considered appropriate in this part of the plan area or indeed what considerations should be taken into account in determining whether a proposal does or does not optimise the potential of a specific site.
18. For the above reasons, I am satisfied that the proposed development would not be at variance with the aims and objectives of policy DM2 of the IWCS and would also be compliant with the corresponding policies of the Framework.

Other Matters

19. Concerns have been raised regarding the impact of the appeal proposal on neighbours, highway safety, the local landscape, character and appearance, precedent, the reduction of the open gap between Cowes and Newport and the acceptability of housing in this location. There is no detailed evidence before me to suggest that any of these concerns would result in material harm or any conflict with the relevant policies of the IWCS, including the latter's spatial and growth strategy and I note they are not issues that the Council have raised. In relation to highways, the highway authority, Island Road's, raised no objection to the proposed indicative access. In addition, even with the proposed development, there would remain a significant gap between the settlements of Cowes and Newport. I am satisfied, therefore, that none of these issues would give rise to any significant harm or any material conflict with the Framework or IWCS, when read as a whole.
20. The Appellant has submitted completed Unilateral Undertaking's (Deeds) dated 31 October 2019, 9 September 2020 and 18 March 2022. The first Deed sought to secure contributions towards affordable housing and habitat mitigation, with the two subsequent Deeds required to deal with changes to the level of habitat contributions. The Council's email of 6 April 2022 confirmed that all three Deeds collectively secured the required mitigation. The Deeds obligate the owner to pay the habitat mitigation contribution prior to the commencement of development and the affordable housing contribution prior to the occupation of the respective dwellings.
21. Having reviewed all three Deeds, I am satisfied that these obligations are reasonable and effective, and would meet the requirements of the Affordable Housing Contribution Supplementary Planning Document (March 2017), the Solent Recreation Mitigation Strategy (December 2017) and policies DM4 and

SP5 of the IWCS. The obligations within these Deeds are necessary to make the appeal proposal acceptable in planning terms; they are directly related to the proposed development; and fairly and reasonably related in scale and kind to the development. As such, all three tests set out in paragraph 57 of the Framework are met, and all the three statutory tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 are similarly met.

Planning balance

22. The Council accepts that it cannot identify a 5-year supply of housing land. Accordingly, paragraph 11 d) of the Framework states that where the relevant policies of the development plan are out of date (which footnote 8 states includes, for applications involving the provision of housing, where the local planning authority cannot identify a 5-year supply of housing land), planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole or where policies in the Framework that protect areas/assets of importance provide a clear reason for refusing permission. The latter does not apply here and as I have already found, the appeal proposal would not result in any adverse impacts.
23. Turning to the benefits, the proposed four dwellings would secure a small contribution to future housing provision and a social benefit, given the housing shortfall; there would be economic investment both from their construction and subsequent occupation; the site is sustainable and accessible; and the new dwellings would support the vitality and use of local services and facilities. Whilst individually, these benefits are small, combined they carry, in my view, modest weight in favour of the development.
24. In the context of paragraph 11 d) of the Framework the appeal proposal would not result in any adverse impacts and the presumption in favour of sustainable development applies, which combined with the benefits of the scheme, points towards the grant of planning permission.

Conditions

25. The Council has suggested several conditions which I have considered against the advice in the Framework and the Planning Practice Guidance (PPG) chapter on the use of planning conditions.
26. Conditions relating to compliance with the approved plans/documents, for details of materials, boundary treatment and a soft landscaping scheme to be submitted and approved, are reasonable and necessary in the interests of securing a high quality development and to reflect the details included with the application.
27. Similarly, conditions requiring the submission and approval of an arboricultural statement, an ecological management plan, to secure compliance with the submitted ecological and Badger assessments, the submission and approval of a surface water drainage and foul water disposal scheme and provision of the required visibility splays, are also reasonable and necessary in order to safeguard the health of existing trees and ecological/biodiversity interests, to ensure a satisfactory drainage system and that the site is suitably drained, and in the interests of highway safety.

28. Whilst the PPG advises that permitted development rights should only be taken away in exceptional circumstances, I am satisfied that those circumstances exist here and that conditions preventing the construction, improvement or alteration of any means of enclosure, under permitted development rights and to prevent all forms of extensions, alterations and associated improvements to the permitted dwellings, are necessary and reasonable in order to safeguard and protect the amenities of residents, and in the interests of the visual amenities of the area, the sites landscape setting and highway safety.

Conclusion

29. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR

Annex - Conditions

- 1) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this planning permission. The development hereby permitted shall be begun before the expiration of 2 years from the date of approval of the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 2) Approval of the details of the siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site (hereinafter called ""the reserved matters"") shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) The development hereby permitted shall only be carried out in accordance with the details shown on the submitted plans and documents:
 - o Outline Site Proposals Drawing No. 0002 Rev P7
 - o Proposed Western Buffer Zone Drawing No. 0003 Rev P2
 - o Tree Survey and Constraints Plan Rev A (Received 11 August 2020)
 - o Eagle Eye Dormouse Survey Dated 04 August 2020
 - o Arboricultural Report Dated 8 January 2020 Rev A (Received August 2020)
 - o Site Location Plans Drawing No. 0001 Rev P3 (Received January 2020).
- 4) No exterior work to construct the dwellings or exterior paths hereby permitted shall take place until samples of materials, including mortar colour relating to the external surfaces and the roof materials alongside details relating to rainwater goods, to be used in the construction of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details have been submitted to and approved in writing by the Local Planning Authority of the positions, design, materials and type of boundary treatment to be erected. The boundary

treatment shall be completed before the dwellings hereby permitted are occupied in accordance with a timetable agreed in writing with the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 6) No development shall take place until an Arboricultural Method Statement has been submitted to and agreed in writing by the Local Planning Authority detailing how the potential impact to the 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 shall then be adhered to throughout the development of the site.
- 7) The dwellings hereby permitted shall not be brought into use until there has been submitted to and approved in writing by the Local Planning Authority a scheme of soft landscaping in accordance with the principles shown on the approved plans and supporting information. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities. All plants shall be native species. All planting in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the commencement of the development hereby permitted and any trees or plants which within a period of 5 years from the commencement of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 8) No development shall take place until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the Local Planning Authority. The EMP shall set out measures to protect wildlife during both construction and operational phases of the development, based on the principles of the Preliminary Ecology Appraisal and shall include detailed ecology surveys that build upon the Appraisal. The EMP shall include the following additional information:
 - o The methods of construction and works for clearing vegetation on a precautionary basis (by hand or using light machinery to be agreed as part of this condition) to prevent harm to protected species
 - o Measures to prevent open trenches from infilling with water, to prevent trapping of wildlife
 - o Details of working methods to prevent harm to protected species recorded through the additional species surveys
 - o Details of the location and number of bird and bat boxes to be installed at the site
 - o Methods of ensuring wildlife connectivity throughout the site
 - o Details of additional planting (in combination with condition 7) to ensure ecological enhancement
 - o If, during any stage of development of the site, protected species are identified, an ecologist should be contacted to ensure compliance with wildlife regulations, including periods when works should cease due to nesting and hibernation seasons.

- 9) The development hereby permitted shall be carried out in accordance with the mitigation and enhancement measures set out in the Preliminary Ecological Appraisal, dated December 2019.
- 10) The development hereby permitted shall be carried out in strict accordance with the mitigation measures, licencing, badger sett closure and timetable of works set out in the Badger Mitigation Methodology Report (dated 24 March 2021).
- 11) Prior to work commencing on site details of the proposed means of surface water drainage based upon sustainable drainage principles shall be submitted to the Local Planning Authority for agreement in writing. Such details shall include calculations, detailed designs, measures relating to the design and maintenance of any on-site SUDS facilities, a phasing plan and timetable for the delivery of any required infrastructure. The agreed details shall be installed during the development of the site in accordance with the agreed phasing plan for the drainage infrastructure, unless otherwise agreed in writing by the Local Planning Authority. No dwelling hereby permitted shall be occupied until the means of foul and surface water drainage for that dwelling has been installed.
- 12) The development hereby permitted shall not be occupied until sight lines have been provided in accordance with the visibility splays shown on the approved Drawing No. 0002 Rev. P7. Nothing that may cause an obstruction to visibility when taken at a height of 1.0m above the adjacent carriageway and public highway shall at any time be placed or be permitted to remain within that visibility splay.
- 13) 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. The 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 be retained thereafter.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development within Classes A to E (inclusive) of Part 1 of Schedule 2 to that Order shall be carried out other than that expressly authorised by this permission.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no fencing, wall or other means of enclosure (other than that expressly authorised by this permission) shall be erected, unless otherwise approved in writing by the Local Planning Authority.

Ends of Annex.