



Appeal Decision

Site visit made on 1 September 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2022

Appeal Ref: APP/L1765/W/22/3291091

The Reservoir, Abbotstone Road, Fobdown, Hampshire, SO24 9TD

- 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 and Mrs Martin Pratt against the decision of Winchester City Council.
 - The application Ref 21/01334/FUL, dated 13 May 2021, was refused by notice dated 18 August 2021.
 - The development proposed is described as 'Change of use of land from agricultural to Class C3 (Dwellinghouse). Development comprising the reshaping of the reservoir to provide for the construction of a floating five-bedroom dwellinghouse, with part subterranean garage, made pursuant to the provisions of paragraph 79(e) of the National Planning Policy Framework (NPPF) (2019). To include: the formation of a new vehicular access from Abbotstone Road, the laying of a driveway and forecourt, engineering works for the purpose of landscaping, and the installation of two floating solar islands'.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land from agricultural to Class C3 (Dwellinghouse), the reshaping of the reservoir to provide for the construction of a floating five-bedroom dwellinghouse with part subterranean garage, the formation of a new vehicular access from Abbotstone Road, the laying of a driveway and forecourt, engineering works for the purpose of landscaping, and the installation of two floating solar islands at The Reservoir, Abbotstone Road, Fobdown, Hampshire SO24 9TD, in accordance with the terms of the application, Ref: 21/01334/FUL, dated 13 May 2021, subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for an award of costs was made by Mr and Mrs Martin Pratt against Winchester City Council. This application will be the subject of a separate Decision.

Main Issues

3. Subsequent to the Council's decision, a planning obligation has been submitted by the appellant to address the Council's second reason for refusal. The Council has confirmed through its statement of case that it is content the proposal would not have an adverse impact on the Solent Special Protection Area due to the mitigation outlined in the planning obligation. This is a matter to which I will return to as part of my appropriate assessment. That said, as it is no longer a matter in dispute, I have not addressed it as a main issue.

4. Thus, the main issues in this appeal are:

- Whether the appeal site is a suitable location for the proposed development with reference to the spatial strategy in the development plan; and
- Whether other material considerations indicate the proposal should be determined otherwise than in accordance with the development plan.

Reasons

Suitability of the location with reference to the spatial strategy

5. In order to provide development in sustainable locations, support the vitality of rural communities and maintain the rural character of the landscape and identity of settlements, the Council has adopted a spatial strategy for the market towns and rural areas. This involves permitting some housing in these areas to meet local needs. The housing is to be directed to the identified settlements with the level of growth proportionate to its role and function.
6. To support this approach of directing proportionate new development to settlements, Policy MTRA4 of the Local Plan¹ states that in the countryside, defined as land outside settlements, only certain types of development will be permitted subject to the impacts. This includes, for example, that required for agriculture, the reuse of buildings, the expansion of existing businesses or small-scale tourism. The appeal scheme would not be any of the types of development listed in Policy MTRA4. The corollary being that the proposal would be at odds with this policy.
7. In conclusion, the proposal would not be a suitable location for the appeal scheme when applying the spatial strategy in the LP, which is a carefully drafted and considered statement of policy. Instead, the proposal would undermine the objectives of the strategy. This would be harmful given the relative certainty and public interest that flows from a planning system that is genuinely plan led.

Other considerations

8. The appeal site is located about one kilometre from the edge of New Alresford. Undeveloped open countryside in the form of agricultural fields separate the appeal site from this settlement. Accordingly, the appeal site is physically separate from New Alresford. There is some sporadic development along Abbotstone Road, including a newly converted barn to the north of the appeal site. However, this is dispersed and situated in open landscape. There is not a sense of entering a settlement and leaving the countryside. As a result, the pockets of development along Abbotstone Road do not constitute a settlement, village or rural community. As a result, the appeal site is separate from any settlement and is therefore isolated within the meaning of the National Planning Policy Framework (the 'Framework') when given its proper interpretation as confirmed by the courts²

¹ Winchester District Local Plan Part 1 – Joint Core Strategy

² In *Braintree DC v Secretary of State for Communities and Local Government* 2018 WL 01513032 and *City & Country Bramshill Ltd v Secretary of State for Housing, Communities And Local Government & Ors* [2021] EWCA Civ 320, which confirmed that the question to grapple with is whether a development would be physically isolated from a settlement, rather than other buildings. What is a 'settlement', and whether the development would be 'isolated' from one are matters for the decision maker.

9. Paragraph 80e) of the Framework provides in principle support to isolated homes in the countryside when the design would be of exceptional quality. The appellant submits that this would be the case in this instance. To achieve this benchmark, the proposal needs to be truly outstanding by satisfying four tests. These being that the architecture would be of the highest standard, help raise design standards more generally in rural areas, significantly enhance the immediate setting and be sensitive to the defining characteristics of the area.
10. The Framework does not define these terms or tests further and therefore it is a matter of planning judgment whether they are met. It is often helpful in reaching such a view to have the input of specialists, such as a multi-disciplinary design panel. However, in this instance the Council decided not to present the current scheme to a panel despite the appellant requesting this. Previous comments from a design review panel regarding an earlier iteration of the project focused on whether the proposal would be innovative instead of outstanding. It is also unclear what the expertise of the panel members was and whether it was multi-disciplinary. As a result, their findings are of limited assistance to my assessment. Nevertheless, the appellant's submissions are comprehensive and sufficient to facilitate a judgment to be reached against each of the tests. I also note that neither the Council's Urban Design nor Landscape Officer objected, but I have reached my own conclusions.
11. The proposed dwelling would float on the reservoir and would communicate the form of a water lily with the pedestrian bridge being the stalk. In this respect, it would have a unique, whimsical, and attractive architectural appearance which would reflect the aquatic context and impart an elegant, balanced and sculptural quality of a high order. The proposal would not be especially large, bold, or assertive, but architecture need not be so to be of a high standard.
12. An assessment of architectural quality can go beyond the appearance of the building and include other matters such as the construction method. In this respect, the floating concept of the house would be especially interesting and require experimental engineering and construction of a high calibre. The building would also incorporate an outstanding approach to the challenges of climate change as its full electricity demands, including electric vehicles, would be met through solar panels. Batteries would be used to ensure this occurs all year round. An underwater system would turn the heat in the water into heating energy. This would be sufficient to adequately warm the building given its fabric. The water requirements of the occupants could also be met by water recycling and harvesting with the sedum roof incorporating a moisture matt. Excess rainwater would instead be stored in the building's hull for reuse. Overall, the proposal would be architecture of the highest quality.
13. There are apparently few opportunities for floating homes in the district and therefore other opportunities to replicate the proposal would be limited. However, it is not just the floating concept that is outstanding. The proposal is a synthesis of environmentally friendly, sculptural architecture that sits sensitively and subtly in the landscape. In this respect it would be a show case of what can be done. It would be so unique and interesting that it would provide inspiration to other designers who may wish to replicate or build upon the concepts employed. In this respect it would help raise design standards more generally in rural areas.

14. The Landscape and Visual Impact Assessment submitted by the appellants demonstrates that the building would not be prominent in the landscape. In this respect, its visual presence would not significantly enhance the immediate landscape setting. However, given that the landscape around the appeal site is generally open and unspoilt, a prominent building in this location would be inappropriate. Thus, the building, through its siting, would have a purposely restrained presence to respect the context. That said, the appeal scheme would relate well to, and enliven the site due to its 365-degree design. The scheme as a whole would also enhance the hard unnatural appearance of the reservoir by providing softer and more informal edges. Importantly, the proposal would significantly enhance biodiversity, especially for white-clawed crayfish, in a way beyond normal policy expectations as detailed in the Ecological Management Plan. Taken together, these points are sufficient to achieve a significant enhancement of the immediate setting.
15. As already explained, the area is typical of the largely open, rural and rolling chalk downland character of the North Itchen Downs Landscape Character Area, although the converted barn to the north erodes tranquillity and is stark. The converted barns, and the reservoir provide some built context that would lessen the impact of the appeal scheme on the tranquillity of the area. Light pollution and glare would be minimised by the soffit overhangs and automatic blinds.
16. In response to the rural and open character of the landscape, the proposed dwelling would sit in the lowest part of the site and therefore only fleeting views of it would be achieved, predominantly from short sections of Footpath 2 and the Oxdrove Way. The use of natural or muted colours along with a 'green' roof would help to integrate the building with the colour pallet found in the surrounding fields and thus soften it. Accordingly, the proposal would not appear unduly prominent or stark in the landscape.
17. The proposal would urbanise the site as a building would be erected where there is not one currently. However, this is an inherent consequence of allowing outstanding architecture in isolated locations in the countryside and therefore the siting and design must be considered with this in mind. In this instance, the proposal is making use of a site dominated by an unattractive manmade reservoir. Moreover, and importantly, the carefully considered approach to the siting of the building in the landscape means it would be sensitive to the characteristics of the area despite not replicating the vernacular styles of buildings found locally.
18. I accept that the design could possibly have been improved by more overtly referencing some locally distinctive materials and perhaps the agricultural history of the area. However, by being sensitive to the surrounding landscape and utilising natural or warm earthy coloured materials the building would invoke vernacular building traditions, in that it would be of the landscape in some respects.
19. Given the sensitive and considered response to the landscape setting of the site, the appeal scheme would not appear stark or incongruous and therefore the appeal site is not one that inherently fails to lend itself to such a proposal. Instead, the building would subtly spark some curiosity when seen from limited near distance vantage points in the landscape but appear striking and of high quality within its immediate visual envelope.

20. The removal of eight metres of mature hedgerow along the adjoining country lane to create the access, along with further scrub removal and engineering operations to create a driveway into the site, would be notable drawbacks of the proposal at odds with the Council's Landscape Character Assessment. However, the access would be sensitively detailed with a five-bar gate and an appropriate surface treatment. Compensatory planting would also occur, and the gap would open a potentially attractive view over the redesigned reservoir and towards a rolling valley and vineyard. On balance, the removal of the hedge is not a determinative matter against the scheme as a whole, albeit subject to appropriately worded landscaping conditions. The garage is a weak element of the proposal, especially as the awkwardly proportioned front with up and over garage doors would be visible when approaching the dwelling. However, it would be recessive and largely below ground. On balance, this aspect of the scheme would not diminish the outstanding overall quality.
21. To summarise, the design would be unique and outstanding and thus reflect the highest standards of architecture. In so doing, it would be inspirational and would help raise design standards in rural areas as an example of best practice. The proposal would significantly enhance its immediate setting and respond sensitively to the local characteristics of the area. As a result, the proposal would be of exceptional quality. It would therefore meet the exception outlined in Paragraph 80e) of the Framework. Accordingly, there would be no conflict with policies DM15 and DM23 of the Winchester District Local Plan Part 2 and the High Quality Places Supplementary Planning Document, which seek to secure sensitive, contextually appropriate and high quality design.
22. Being a reasonably large, complex and no doubt expensive project, constructing the appeal scheme would provide some modest benefits to the local economy. The location would also enable future occupants the opportunity to walk or cycle into New Alresford on occasion. This would be reasonably convenient given the proximity of the Wayfarer's Walk. The proposal would also very modestly boost housing supply and the appellant has completed a declaration (CIL Form 7 Part 1) that the proposal would be a self-build project. I have already stated that it would enhance biodiversity, which is an aim of the Council's Landscape Character Assessment. These are further factors that add additional limited weight in favour of the scheme.

Appropriate Assessment

23. The appeal site is in the catchment of the Solent sites³. These protected sites are important habitat for a range of waterbirds, which are the qualifying features. The conservation objectives for these sites can be summarised as ensuring the extent and distribution of habitats and that the population of qualifying features is maintained or restored.
24. The water environment within the Solent area is important to the qualifying features. Nitrogen and phosphorus entering this water environment via the River Itchen causes eutrophication that effects the marine ecology and adversely impacts the protected habitats and bird species. A residential development such as the appeal scheme provides a pathway for nutrients to enter the water environment. As such, it could have a likely significant adverse effect on the integrity of the Solent in combination with other plans and

³ The Solent Maritime SAC, Solent and Southampton Water SPA, Portsmouth Harbour SPA and Chichester and Langstone Harbours SPA

projects. Thus, an appropriate assessment, in accordance with the Habitat Regulations⁴, is required to consider the implications of the proposal on the Solent area in view of the conservation objectives.

25. The appellant has provided an updated nutrient neutrality report which calculated a nutrient budget for the proposal. The calculations take into account the location of the site, the foul water management system proposed (a package treatment plant with discharge to the ground via a drainage field), soil conditions and previous and future land uses. There is nothing of substance before me challenging the findings in the budget.
26. The appellant's nutrient neutrality report, which was prepared by a chartered scientist, concludes that no additional mitigation is required if the package treatment plant is correctly installed, operated and maintained, and the land changes set out in the ecological management plan occur (from agriculture to wildlife habitat). Moreover, the report also concludes that there is a low risk pathway for phosphorus to reach the River Itchen because there would be no discharge into surface water. As a result, there would be no significant effect in this respect, alone or in combination.
27. Natural England has indicated that chemical dosing within package treatment plants should not be used to achieve nutrient neutrality unless sufficient measures are in place to ensure the homeowner will provide the correct dosing in perpetuity. The appellant has provided details setting out how the correct dosing would be achieved through automation and suggested a condition is imposed to secure this. The Council has not raised objections in this respect and are satisfied that the planning obligation would secure the necessary safeguards. Moreover, it has apparently approved chemical dosing using polyaluminium chloride solution (Ref. 22/01567/DIC) elsewhere and there is no evidence before me that this has had an adverse effect. Similarly, the planning obligation secures the land use changes and ecological improvements and therefore there would be adequate certainty over the deliverability and enforcement of this aspect of mitigation as well. The monitoring engrained in the planning obligation would provide further certainty in this regard.
28. The planning obligation is directly related to the impacts of the proposal on the Solent sites and is necessary to make the development acceptable. The measures are also fair and reasonable in scale and kind to the development. Thus, the planning obligation can be taken into account. As a result, the proposal would not adversely affect the integrity of the Solent area, the condition of which need not deteriorate as a result of the proposal.

Conditions

29. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council. It is necessary in the interests of certainty and to secure the outstanding nature of the proposal, that it is undertaken in accordance with the submitted drawings and the energy/water efficiency measures. For similar reason it is necessary that permitted development rights are removed for alterations and external finishing materials are approved. I have referred to the appellant's Energy Report instead of a Code for Sustainable Homes rating because it would ensure the building performs at a very high standard.

⁴ See Regulation 63 Conservation of Habitats and Species Regulations 2017 (as amended).

30. In the interests of highway safety, it is necessary to ensure the access is provided prior to occupation. It does not need to be provided prior to construction works starting given the provisions of the construction management plan. In the interests of biodiversity, living conditions, landscape and highway safety, it is necessary to secure a construction management plan and implementation in accordance with the arboricultural method statement. It is also necessary to secure the mitigation and compensation measures in the ecological management plan for these reasons.
31. The Council's recommended Condition 13 duplicates the planning obligation and is unnecessary. That said, requiring adherence to the Kingspan guidelines for BA-BN Biodisc is necessary in the interests of protecting the integrity of the Solent sites.

Conclusion

32. The proposed development would be at odds with Policy MTRA4 and thus contrary to the development plan as a whole. However, as an isolated home of exceptional quality, the proposal would be supported by Paragraph 80 of the Framework. Policy MTRA4 predates the Framework and is not consistent with Paragraph 80. In this instance, the balance of the considerations are such that the appeal should be determined otherwise than in accordance with the development plan and allowed.

Graham Chamberlain
INSPECTOR

Schedule of Conditions

1. The development to which this permission relates must be begun not later than three years beginning with the date on which this permission is granted.
2. The development hereby permitted shall be carried out in accordance with the drawings listed in the Planning Application Index prepared by Fredrick Adam Ltd dated 12 May 2021.
3. Prior to their use, details and samples of the external finishing materials to be used in the construction of the external surfaces of the development hereby permitted shall have been submitted to and approved in writing by the Local Planning Authority. This shall include:
 - Details of the green roofs, including plant species to be used;
 - Details of the proposed metal cladding;
 - Details of the windows and doors in respect of materials, colour as well as the submission of sections at a scale of 1:20;
 - Details of proposed louvres.

Development shall be carried out in accordance with the approved details.

4. Development shall cease on site if, during any stage of the works, unexpected ground conditions or materials which suggest potential contamination are encountered, unless otherwise agreed in writing with the Local Planning Authority. Works shall not recommence before a site assessment has been undertaken and details of the findings along with details of any remedial action required (including timing provision for implementation), has been submitted to and approved in writing by the Local Planning Authority. The development shall not be completed other than in accordance with the approved details. NB - potentially contaminated ground conditions include infilled ground, visual evidence of contamination or materials with an unusual odour or appearance.
5. The development shall not be occupied until a site access and visibility splays has been provided in accordance with the approved plans. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over one metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays. The approved visibility splay will thereafter be retained in the approved form.
6. Prior to construction works commencing a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include the following details;

General:

- Phases of development.
- Code of Construction Practice for all works and operations on the site
- Use of fences and barriers to protect adjacent land
- Measures to be undertaken to minimise impacts on surrounding land
- Timetable and dates for stages of the development, including land restoration at the completion of construction works.

Environmental:

- Dust suppression, mitigation and avoidance measures
- Measures for minimising construction waste and provision for the reuse and recycling of materials which shall be used in the construction of the development.
- Noise reduction measures, including use and details of acoustic screens and enclosures, the type of equipment to be used and their hours of operation
- Floodlighting and security lighting. (note: this must be directed in such a way as not to cause nuisance to adjoining properties or adjacent highway)

Ecological:

- Timing restrictions for staged removal of any vegetation so as not to conflict with breeding seasons
- Measures to be taken to prevent contaminants from entering watercourses or the water environment

Transportation:

- A traffic management plan for construction vehicles entering and leaving the site, including times of movement so as to avoid peak period traffic
- The Construction Management Plan shall be adhered to throughout the duration of the construction period. For the avoidance of doubt, this condition covers all construction and demolition work (including the breaking up and removal of pavement) on the application site.
- Reason: To ensure that all demolition and construction work in relation to the application is undertaken in a sustainable manner and does not cause materially harmful effects on nearby properties and businesses.

7. 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 permitted by Classes A, B, C, D and E of Part 1; of Schedule 2 of the Order, shall be carried out without the prior written consent of the Local Planning Authority.
8. The development and site shall be carried out, managed and occupied in accordance with the measures, work plans, management actions, conclusions and recommendations set out within the Water Lily House, Fobdown Ecological Management Plan 2021 – 2031 by Arcadian Ecology, dated 2021 and the Extended Phase 1 Habitat Survey and the Dormouse and Reptile Survey also by Arcadian Ecology 2020 and 2019. Thereafter, the compensation and habitat creation/enhancement measures shall be permanently maintained and retained as specified.
9. The development shall not be occupied until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:
 - Proposed finished levels or contours, in comparison to existing ground

levels, including the damp proof course and ground floor of the proposed buildings, and the relationship to the levels of adjacent buildings, together with contours to be formed and earthworks to be undertaken;

- All boundary treatment;
- Hard surfacing materials;
- Means of enclosure, including any retaining structures;
- Car parking layout;
- Other vehicle and pedestrian access and circulation areas;
- Refuse or other storage units
- External lighting

Soft landscaping works shall include:

- Planting plans (for new trees, hedges and other planting);
- Written specifications (including cultivation and other operations associated with plant and grass establishment);
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate;
- Implementation programme.

10. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out before the use hereby permitted is commenced or in accordance with some other programme agreed with the Local Planning Authority. If within a period of five years after planting any tree or plant is removed, dies or becomes, in the opinion of the Local Planning Authority, seriously damaged, defective or diseased another tree or plant of the same species and size as that originally approved shall be planted at the same place, within the next planting season, unless the Local Planning Authority gives its written consent to any variation.
11. Prior to the occupation of the dwelling hereby approved, written details shall be submitted to and approved in writing by the local planning authority to confirm the water, fabric and energy measures set out in the Energy Strategy, Innovation Report and Design and Access Statement have been implemented and are ready for use. Thereafter, the development shall not be occupied or operated otherwise than in accordance with the approved details
12. The development hereby approved shall be implemented in accordance with the calculations and methodology prepared by Earthcare Technical Ltd dated 29 July 2022 and to comply with the Kingspan guidelines for BA-BN Biodisc with chemical dosing for the lifetime of the project or until such time that it is agreed in writing with the planning authority that another suitable solution is in place.
13. The development hereby approved shall be implemented in accordance with the measures set out in the Arboricultural Method Statement Ref. 1164.bjh.Mar21.