
Appeal Decision

Site visit made on 6 June 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2022

Appeal Ref: APP/W1715/W/21/3284081

Land at Toynbee Road, Eastleigh SO50 9DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Vivid Homes against Eastleigh Borough Council.
 - The application Ref F/20/89489, is dated 16 December 2020.
 - The development proposed is 105 dwellings together with access from Toynbee Road, associated parking and landscaping following the demolition of existing buildings at land off of Toynbee Road, Eastleigh.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was lodged, the Council adopted the Eastleigh Borough Local Plan 2016-2036 on 25 April 2022 (the Local Plan). This has replaced the Eastleigh Borough Local Plan Review 2001-2011. The Council has also formally withdrawn the Submitted Eastleigh Borough Local Plan 2011-2029. The parties have been given the opportunity to comment on this. I have proceeded to determine the appeal on the basis of the Local Plan.
3. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council's appeal statement sets out that had it been in a position to determine the application, it would have approved the scheme subject to conditions set out within its report to the Eastleigh Local Area Committee, dated 16 November 2021 and an agreement under section 106 of the Town and Country Planning Act 1990 (as amended) (the TCPA) to secure contributions to transport infrastructure, community infrastructure projects, New Forest recreational pressure, nitrate mitigation, secondary education, health provision, public open space/play on and off-site, public art, air quality monitoring and affordable housing.
4. Since the appeal was lodged, Natural England (NE) updated the conservation status of The Solent Catchment and provided updated advice¹ and a generic nutrient neutrality methodology and catchment calculator for calculating potential mitigation. The parties have had the opportunity to comment on this. I return to this matter in my main issue below.

¹ Natural England, letter dated 16 March 2022 – Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites

5. The appellant has submitted a second planning application² to the Council for the same development. The Council has stated that this application was identical to the appeal application but, through ongoing work on this application, a number of subtle but important revisions to the site layout and design of the largest flat block have been secured, including additional tree and soft landscape planting throughout the site. The Council has resolved to approve this scheme subject to finalising a number of technical matters.
6. The Council considers the amendments to the second scheme are an improvement over the original scheme and would result in a higher quality scheme overall. For this reason, it has requested that revised drawings showing those amendments are used in the determination of the appeal. The appellant has agreed to this substitution.
7. The proposed changes are related to hard and soft landscaping, on-street parking and the overall setting of the development. These amendments formed the basis of consultation on the second scheme and the Council has confirmed that no specific comments were made in relation to these matters. Given the scale of the scheme, the proposal would not be materially different to that which was originally proposed. I am therefore satisfied that the interests of third parties would not be prejudiced if I were to take the revised drawings into account in my decision. I am therefore considering the appeal on the basis of the amended plans.
8. During the course of the appeal, the appellant has submitted five signed Unilateral Undertakings (UU) under section 106 of the TCPA. One dated 18 May 2022, two dated 12 July 2022 and two dated 22 September 2022.
9. The UU dated 18 May 2022 makes provision for affordable housing, employment skills, on-site open space, financial contributions to community infrastructure, secondary education, transport, healthcare, off-site public open space, public art and air quality monitoring. It also included a New Forest recreational pressure contribution.
10. The 12 July 2022 UUs provide similar obligations but omit the New Forest recreational pressure contribution. Instead, a standalone UU makes provision for habitats mitigation contributions. The 22 September 2022 UUs provide the same obligations to the 12 July UUs with some minor amendments to the drafting UU in response to comments made by the Council. Both the July and September UUs include clauses to allow me to consider whether the earlier UUs would be sufficient. I have proceeded on that basis.
11. The Council has indicated that it no longer disputes the planning obligations other than in relation to habitats mitigation contributions. This is dealt with as a main issue and I return to this below.

Main Issue

12. The main issue is the effect of the proposed development on the integrity of protected habitats sites.

² Council Ref: F/21/91686

Reasons

13. The appeal site is located within 13.8km of the New Forest protected sites. These include the main New Forest Site of Special Scientific Interest (SSSI) which is also a Special Protection Area (SPA), the New Forest Special Area of Conservation (SAC) and Ramsar sites. The appeal site is also located within the Solent region which includes the protected sites of the Solent and Southampton Waters SPA, Ramsar site, the Solent Maritime SAC and the River Itchen SAC and SSSI.
14. These sites are European Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site. I am the competent authority for the purposes of this appeal. In accordance with the Regulations, I must make an appropriate assessment of the implications of the plan or project for the protected sites in view of their conservation objectives.

New Forest protected sites

15. The internationally important interest features of the New Forest designated sites derive from the heathland, water and meadow features, and the habitats they provide for, amongst others, the European honey buzzard, the hen harrier, the Eurasian hobby, the European nightjar, the woodlark, the Dartford warbler and the wood warbler. The sites' conservation objectives can be summarised as avoiding a deterioration of habitats and minimising bird disturbance, thereby ensuring the integrity of the sites is maintained.
16. NE has advised that there is a likely significant effect from any additional residential development within the Borough on the New Forest protected sites based on additional visits from residents of new residential development. These recreational pressures would harm the integrity of the sites unless satisfactory mitigation is put in place.
17. The appellant has agreed to provide mitigation as a financial contribution and the submitted standalone UU seeks to secure this. The appellant is offering a figure of £526.80 per residential unit. This is set out in both the 12 July and 22 September 2022 UUs.
18. This figure has been based on the required contributions for schemes within the New Forest as set out in the New Forest's adopted Mitigating Recreational Impacts Supplementary Planning Document (July 2020). This requires a contribution of £3,512 per dwelling. Since the appeal site lies outside the New Forest National Park, the appellant has calculated a proportionate contribution to this based on survey information of actual visits to the National Park. The contribution when rounded up to take a precautionary approach represents 15% of the required contribution.
19. The Council has adopted an Interim Strategy to address recreation impacts on New Forest protected sites³. This sets out the mitigation required to address the disturbance from the increased number of visits from the occupiers of new residential development within the Borough to March 2027. This includes contributions to a Strategic Mitigation Package comprising proportionate

³ March 2022

- provision of Suitable Alternative Natural Greenspace (SANG) within the Borough and financial contributions to the management of recreational impacts within the New Forest protected sites.
20. The purpose of the SANG is to provide an alternative and more convenient location to attract visitors away from designated sites. The Interim Strategy has calculated the requirement for SANG on the basis of 2ha per 1000 population. This would be funded through financial contributions from new residential development in the Borough to provide new publicly accessible SANG and improvements to the existing Itchen Valley Country Park.
 21. In addition to the provision of SANG, financial contributions would fund the equivalent of one full-time ranger post in the New Forest National Park to 2027. This is intended to address the impact of the residents from new development in the Borough visiting the National Park. The Interim Strategy requires a financial contribution of £1,161 per dwelling to fund both the SANG and the provision of a ranger.
 22. NE has raised concerns about the Council's Interim Strategy on the basis that it is not precautionary enough, seeking a reduced provision of SANG based on 2ha per 1000 population rather than 8ha per 1000 population that NE would normally require. It also does not provide sufficient information about increasing visitor capacity at the Itchen Valley Country Park nor does it include an accompanying monitoring strategy. On this basis, it is understood that NE would require a much higher financial contribution than that set out within the Interim Strategy.
 23. It is not the role of this appeal to resolve the differences between NE and the Council in relation to the Interim Strategy. However, in view of NE's concerns, it is reasonable to view the figure in the Interim Strategy as a minimum. The appellant's proposed mitigation would fall considerably short of the required financial contribution. It would therefore not provide sufficient mitigation to avoid adverse impacts upon the protected sites.
 24. I have been referred to a recent appeal⁴ in the neighbouring authority of Fareham where the approach that the appellant is advocating was accepted by the Inspector. However, from what I have read Fareham did not have its own mitigation strategy which, since the adoption of the Interim Strategy, is not the case in this appeal. In view of this, it is unnecessary to base the requirement on a different strategy drawn up by a neighbouring authority but adjusted to the circumstances of the appeal.
 25. The appellant confirmed that the approach set out above and secured through the submitted standalone UU is its preferred approach. Nonetheless, I am aware that during the course of the appeal that the appellant has proposed alternative mitigation, including a direct contribution to SANG which the Council rejected on the grounds it is fully funded and therefore unavailable to the appellant. Moreover, the Council has indicated that the Interim Strategy would not be available to the appellant but has provided no clear reasons for this. As this is the Council's latest adopted guidance, I have applied it to the appeal before me, having regard to NE's position.

⁴ APP/A1720/W/21/3275237

26. I have considered whether the required mitigation could be achieved through the 18 May 2022 UU. However, whilst this would provide a greater total financial contribution to mitigation this is a contribution to the scheme that is not available to the appellant. This earlier UU would not therefore secure the required mitigation.
27. The proposed financial contribution would fall below the minimum requirements considered necessary to provide mitigation against recreational impacts within the New Forest National Park. I am therefore unable to conclude that the proposed development would not have an adverse impact on the integrity of the protected habitats sites in respect of disturbance through recreation.

The Solent protected sites

28. The water environment within the Solent region is internationally important for its wildlife. The conservation objectives for the protected sites within this area are to ensure that the integrity of the sites are maintained or restored as appropriate.
29. The recent advice issued by NE identified that The Solent is in an unfavourable condition due to excessive nitrogen inputs into the water environment whilst the River Itchen SAC is additionally in an unfavourable condition due to elevated phosphorus levels. These nutrients are causing eutrophication of the designated sites. The sources of these nutrient inputs are from wastewater from existing housing and agriculture. These cause dense mats of green algae to form within the water environment, adversely impacting on the Solent's protected habitats and bird species.
30. NE has advised that there is the potential for future housing development across the region to further contribute to these adverse effects. It advises that the nutrient impacts of any new plans and projects, including new development proposals, on habitats sites should be considered and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.
31. The proposed development would increase nutrient inputs into the water environment unless suitable mitigation could be provided. The appellant submitted a nitrogen budget calculation⁵ as part of the original planning application. This pre-dated the updated advice issued by NE and does not address phosphorus levels within the River Itchen SAC. The appellant has proposed that this matter be addressed by a suitably worded planning condition to secure a mitigation package addressing the additional nutrient inputs arising from the development.
32. I accept that mitigation could achieve nutrient neutrality. However, I have not been provided with the latest position with regards to the potential nutrient load that requires mitigation based upon the most recent NE advice. Furthermore, I have limited details of what the proposed mitigation would be, how it would be secured and whether it would be effective. In the absence of this information, I cannot be certain that any mitigation secured through a condition would achieve the required nutrient neutrality. I am therefore unable to conclude that the proposal would not have an adverse impact on the integrity of the protected habitats sites in respect of nutrient impacts.

⁵ Nitrogen Budget Calculation dated 4 December 2020

33. I appreciate that the Council is currently dealing with a separate application for an identical scheme on the site which I am told benefits from a resolution to grant planning permission and where nitrates mitigation is to be addressed via a condition. However, whilst this approach is noted, I am the competent authority for the purposes of this appeal and I do not consider this approach would provide me with the certainty that I require that there would be no adverse effect arising from the proposal.

Other Matters

34. There is support for the development of this brownfield site for residential purposes. It is located within an accessible location on the edge of a town centre where higher density housing is supported by national policy. The scheme would also achieve a good level of green infrastructure including an area of public open space. However, whilst positive aspects of the scheme which weight in its favour, these would not outweigh the harm to the protected habitats sites I have identified.

Conclusion

35. For the reasons set out above, I conclude that the appeal should be dismissed and planning permission is refused.

Rachael Pipkin

INSPECTOR