



Appeal Decision

Site visit made on 12 April 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 6 January 2023

Appeal Ref: APP/P2114/W/21/3280307

Land adjacent to The Stables, Woodvale Road, Gurnard, PO31 8EB

- 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 & Mrs Jamie Currie against the decision of Isle of Wight Council.
 - The application Ref: 20/02048/FUL, dated 20 November 2020, was refused by notice dated 7 May 2021.
 - The development proposed is a detached dwelling and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's first reason for refusal is in two distinct parts. The latter part is concerned with the effect of the appeal scheme on the character and appearance of the area including its effect upon trees. This matter shall form a main issue and I shall return to consider it below.
3. However, the former part of the reason for refusal concerned the adequacy of living conditions for future occupants of the proposed dwelling with particular regard to levels of light. Subsequently, as part of the appeal, the appellant has undertaken an updated Shade Assessment to address the Council's concerns regarding the level of light that would be experienced within the internal accommodation as a consequence of the retained trees. The additional information addresses the Council's concerns regarding the living conditions of future occupiers and the Council advises that this part of the reason for refusal is no longer contested. Having had regard to the submitted evidence, I see no reason to take a different view.
4. A further reason for refusal concerns the effect of the proposed development on the Solent Special Protection Area (SPA), Portsmouth Harbour SPA and Ramsar, Solent and Southampton Water SPA and Ramsar and the Solent Maritime Special Area of Conservation (SAC). The proposal has the potential to result in increased recreational disturbance to the interest features of the Solent SPA alone, and in combination with other development projects together with the impacts of additional nutrient loads on those Habitats Sites from foul water drainage.
5. The appellant's submitted evidence demonstrates that foul water outfall would be to the Sandown Wastewater Treatment Works. This matter would be capable of being controlled through an appropriately worded planning condition. Furthermore, the submitted planning obligation secures a financial

contribution to the Solent Recreation Mitigation Strategy (SRMS) and as a result of these matters, the Council advises that it no longer contests the second reason for refusal regarding the effect of the proposal on Habitats Sites. These are matters to which I shall return within my reasoning below.

6. A number of planning obligations made in accordance with section 106 of the Town and Country Planning Act 1990 (as amended) have been submitted as part of the appeal. A signed s.106 planning agreement dated the 16 February 2021 makes provision for the payment of a financial contribution towards the provision of off-site affordable housing and a 'habitat mitigation contribution' calculated in accordance with the Council's SRMS to prevent bird disturbance within the Solent SPA. Two additional signed planning obligations in the form of unilateral undertakings (the first dated 14 January 2022 and a second which is undated) secure the payment of additional financial contributions being the balance of the habitat mitigation contribution. These planning obligations are a material consideration in my determination of the appeal and I shall consider these further in the reasoning below.

Main Issue

7. The main issue is the effect of the proposed development on the character and appearance of the surrounding area including its effect on trees.

Reasons

Character and appearance

8. Woodvale Road is a predominantly residential area that is characterised by a mix of dwellings of varying type, size and style. Dwellings are typically arranged to front the highway with their built form mostly spreading across the width of their plot resulting in a closely-knit character. Generally, front garden areas are modestly sized and comprise areas of grass and soft landscaping together with areas of hardstanding for the parking of vehicles. Rear gardens are more extensively sized with mature trees and vegetation forming an attractive wooded backdrop. Taken together with blocks of woodland and scattered trees, the area has a pleasant, spacious and sylvan character.
9. The appeal site is a roughly rectangular parcel of grassland comprising a variety of mature, semi-mature and early mature deciduous tree specimens, a number of which are protected by a Tree Preservation Order (TPO). The trees are substantial in height and size and are mainly positioned towards the edges of the site with a clearing being located within the central part. Despite not being in leaf at the time of my site visit, for the most part their form indicates a sizeable spread of their canopies albeit those trees located along the south-eastern boundary appear to have smaller canopies than the larger specimens positioned around the other sides.
10. The appeal site is located partway along a shared private access drive and is surrounded along three edges by dwellings, thus limiting views of the site from public vantage points. Nonetheless, the remaining boundary is adjacent to a private access track with scattered trees and open agricultural land beyond and by reason of their size and height, the trees appear as part of a wooded backdrop in some public views from the highway and from neighbouring properties and land.

11. As detailed within the appellant's Tree Survey and Arboricultural Impact Assessment (TS), a number of these trees are identified as category 'A' and 'B' trees that appear to be in a fair to good condition. Notwithstanding that some of the trees are of a lesser quality and condition, as a group these trees provide an important respite within the built environment and collectively they make a significant contribution to the verdant and spacious qualities of the area.
12. I note that the appeal scheme has been designed in a way which seeks to minimise causing damage to the health of the trees by reason of its proposed position within the central part of the site on a light-weight stilted structure. The position of the raised piles outside of the trees' root protection areas (RPAs) and the inclusion of a rainwater irrigation system to re-distribute rainwater beneath the dwelling in order to minimise changes to current ground moisture adjacent to the RPAs are all noted.
13. Nonetheless, a considerable part of the curtilage to the proposed dwelling would be occupied by the retained trees together with an additional replacement tree to be planted as a replacement for a TPO tree that has already been lost. In terms of their longevity, the majority of the retained trees are estimated to have a remaining life expectancy of between 20-40yrs and thus are capable of continuing to make an important contribution to the overall visual amenity of the area for a considerable period in the future.
14. The proximity of these trees and their presence surrounding the proposed dwelling would lead to large parts of the external areas and some part of the dwelling being shaded for considerable parts of the day. I note that the appellant's shade report has demonstrated that adequate levels of light would be received within the dwelling, however, notwithstanding this, trees can be perceived as a nuisance, notably by reason of the obstruction of light and from falling leaves and larger debris.
15. Although the trees were noted to be clear of the proposed building at the time of the tree survey, there would be some degree of overhanging branches over the proposed amenity areas including a decked area. Moreover, given that a considerable proportion of the retained trees are yet to reach maturity, these specimens will inevitably continue to grow.
16. The Tree Survey Schedule describes T9 to be of 'low vigour'. However, there is little evidence to demonstrate that this rate of growth applies to the remaining trees. Furthermore, the Council's evidence indicates that, with particular regard to the young Oak specimens, these tend to grow vertically at first. There is some suggestion that this growth is in part influenced by reason of their coastal position, however, this matter is disputed by the appellant and there is little substantiating evidence to corroborate this point. Nevertheless, I note the close proximity of the trees to each other as a contributing factor to their vertical growth at earlier stages of maturity.
17. As the position changes over time and the growth of tree specimens becomes more focussed on horizontal growth, this would likely result in an increased spread of their crowns. As a consequence of the proposed development, at the outset, a number of canopies would be broadly in line with the edge of the building and this position would be likely to worsen as trees continue to grow. In my view, there is a likelihood that the crowns of several trees would overhang the proposed property over time. In reaching this view, I note that the crown of T2 currently extends approximately 5 metres in the direction of

the proposed building and as an early mature tree it has potential for future growth. Taking account of the Council's evidence derived from the Collins Field Guide to Trees in Britain and Europe which suggests that Oak tree crown spread can reach up to 10 metres, the extent of overhanging branches is likely to be considerable.

18. I note the appellant's intention to live at the proposed dwelling and their affection for a wooded setting. However, whilst the appellants may initially place a high value on the contribution that the trees make to the setting of the property, in my view, it is likely that future occupants would fail to appreciate the implications of living adjacent to the trees. Over time the shade cast by the retained trees would increase therefore resulting in the garden becoming heavily shaded and rooms within the proposed dwelling to become unduly gloomy which I consider will intensify pressure to carry out work to the retained trees.
19. Alternative outdoor amenity areas to the front of the dwelling could offer the future occupants an alternative space for use, however, its position to the front of the property provides less privacy and together with the presence of hardstanding areas for access and parking, this reduces its potential and desirability for use as an alternative to using the rear garden of the property.
20. As a result, I consider it is likely that the appeal scheme would subject the trees to additional pruning works or even felling. As several of these trees are noted to be early mature and semi-mature specimens, this issue would become more acute as these trees would continue to grow before reaching their optimum height and canopy spread. An application for works to any tree, if it were to be allowed, would result in unbalanced growth of the crown, diminish the contribution to visual amenity and compromise the longevity of these specimens. Although the Council would retain some control over any proposed works to the trees given the protection afforded by the TPO, I accept that it would be difficult to resist such applications in circumstances where safety is at issue or where damage is being sustained. This would run contrary to the objective of BS5837:2012 to achieve a harmonious relationship between trees and structures that can be sustained in the long term in instances where development is proposed in conjunction with tree retention.
21. It has been put to me by the Council that tree T9 has 'the potential to be considered a veteran tree'. The National Planning Policy Framework (the Framework) sets out that development resulting in the loss or deterioration of irreplaceable habitats such as veteran trees should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. However, whilst T9 may develop into a veteran tree at some future date, for the purposes of this appeal, I find there is limited justification for T9 to be considered as a veteran tree and afforded extra protection under the Framework.
22. Nonetheless, the Framework recognises that trees make an important contribution to the character and quality of urban environments and as an attractive and sizeable specimen with a large spread of branches that individually, and collectively with other trees, T9 makes a positive contribution to the verdant and wooded character of the area.
23. Overall, I consider that there is a clear risk that the proposed development would threaten the integrity and long-term future of trees, including those with

the protection of the TPO. Accordingly, this would unduly compromise the significant contribution they make to the character and appearance of the area. Thus, the scheme would conflict with Policies SP5, DM2 and DM12 of The Isle of Wight Council Core Strategy (including Minerals and Waste) and Development Management Development Plan Document (2012). Among other things, these policies require new development to be of a high quality design that protects, conserves and/or enhances the natural environment.

Planning obligation

24. As described above, a number of planning obligations made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) have been submitted as part of the appeal. These secure the payment of financial contributions towards the provision of off-site affordable housing and habitats mitigation. In my view, the obligations provided would comply with paragraph 57 of the Framework insofar as they are necessary, directly related to the development and fairly and reasonably related in scale and kind, together with the statutory tests contained in Regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010. I therefore take account of this obligation in my decision.

Other Matters

25. The appeal site is located within a reasonably sustainable location for new housing within the Cowes and Gurnard settlement boundary. The appeal scheme would make use of under-utilised land and contribute towards the government's aims for the delivery of small sites. There would be some improvement to the current access arrangements through the widening of the shared access which would be a benefit to the occupiers of neighbouring dwellings. I attach moderate weight to these matters.
26. No adverse harm has been identified with regards to the proposed scale, appearance and palette of materials. The surrounding built form is varied and one-off contemporary dwellings are not uncommon. Additionally, there would be no adverse impacts caused to neighbouring occupiers in terms of their privacy, outlook and light. Measures to safeguard commuting routes and the foraging activities would satisfactorily mitigate the impact of the proposed development on badgers. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.
27. It is the appellant's evidence that the scheme would be a self-built home. Although the government is supportive of self-built schemes, there is little evidence before me to secure the delivery of a self-built home. As such, there would be no restriction preventing the scheme from evolving into a different type of development. I therefore attach minimal weight to this matter.
28. I have taken into account the views of third parties and note that there is some support for the appeal scheme. However, the presence of favourable support and the availability of dwellings positioned within an equivalent or more wooded setting does not provide adequate justification for the appeal scheme nor does it overcome the conflict with the development plan in this instance.

Planning Balance

29. The Council are presently unable to demonstrate an adequate five year housing land supply as required by the Framework, which is estimated by the appellant

to stand in the region of 4.16 years and is a considerable shortfall in housing terms. As such, paragraph 11 is engaged and it advises that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

30. In the short term, the appeal scheme would generate economic benefits during the construction phase and in the longer term, future occupants of the dwelling would deliver economic benefits including support to local services, facilities and shops. The appeal scheme would contribute one additional dwelling at a time when the Council cannot demonstrate an adequate five year housing land supply. In addition, the scheme would make a financial contribution to the provision of off-site affordable housing which is aligned with the objectives of the Framework insofar as it seeks to address the needs of groups with specific housing requirements.
31. However, the benefits associated with the provision of one additional dwelling would be very limited in scale and in this instance I find that the adverse impact of the appeal scheme would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
32. The appeal site is located within the zone of influence of the Solent SPA, Portsmouth Harbour SPA and Ramsar, Solent and Southampton Water SPA and Ramsar and the Solent Maritime SAC. The proximity of these European sites means that determination of the application should be undertaken with regard to the requirements of the Habitats Regulations 2017. However, as the appeal is failing because of the harm which has been identified in relation to the main issue, it is not necessary for me to come to a conclusion on any proposed mitigation. The development is not going ahead and therefore any harm to the SPA/Ramsar/SAC would not occur. Therefore, I do not need to give any further consideration to this matter in this appeal.

Conclusion

33. For the reasons given above, I therefore conclude that the appeal should be dismissed.

E Brownless

INSPECTOR