

Appeal Decision

Site visit made on 9 January 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2023

Appeal Ref: APP/P2114/W/21/3290005

Land adjacent to 1 Swains End, Swains Road, Bembridge PO35 5XT

- 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 J Montagu against the decision of Isle of Wight Council.
 - The application Ref 20/00530/FUL, dated 19 March 2020, was refused by notice dated 30 July 2021.
 - The development proposed is construction of single Passivhaus dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal submissions, a unilateral undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted. This is signed and dated 12 July 2022. It deals with affordable housing contributions and habitats mitigation. I return to this later in my decision.
3. The Council's decision notice set out six reasons for refusal. Reason for refusal five, amongst other things, referred to the absence of a planning obligation to mitigate against potential increased recreational disturbance in the Solent Special Protection Area (SPA). Reason for refusal six cited the absence of a contribution towards affordable housing provision. The Council in its statement of case indicated that these reasons could potentially be addressed through the UU but has not confirmed this. I have proceeded to determine the appeal on this basis.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposal would preserve or enhance the character or appearance of the Bembridge Conservation Area;
 - the effect of the proposed development on trees;
 - the effect of the construction phase of the proposed development on a public right of way;
 - the effect of the proposed development on protected habitats sites; and
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- the effect of the proposed development on protected species.

Reasons

Character and appearance

5. The appeal site is a large rectangular plot at the corner of Swains Road and Swains Lane. It is a relatively open area of grassland enclosed by a combination of timber fencing, stone walls and vegetation including several mature trees. It is occupied by a mobile home sited close to its north-eastern boundary plus two timber sheds.
6. The Coastal Path runs along the south-eastern and south-western boundaries of the site, providing an important walking and cycling route through the area. The south-eastern section of the path forms part of a private section of Swains Road with vehicular access and a short section of linear development along its southern side. The south-western section forms part of Swains Lane and is a narrower path with no motorised vehicular access.
7. From this path, there are some limited glimpsed views into the site through gaps in the boundary fence. With the exception of a small number of large properties within substantial grounds which lie between the path and the coastline, development along this section of the path is predominantly confined to its southern side, away from the appeal site, where it forms part of the established built-up area. Where development does exist, it is relatively unobtrusive and the path, particularly along Swains Lane, has a tranquil and semi-rural character.
8. Due to its modest height and the existing enclosure of the site, the proposed dwelling would not be visually prominent. The use of timber cladding would assist in blending the building within the sylvan character of the area. Nevertheless, a dwelling would be visible where there is currently none.
9. Although the site is largely screened from view by trees and fences, the presence of the dwelling, domestic paraphernalia and the comings and goings associated with this use would diminish the tranquil character of the Coastal Path. Even though no on-site parking is proposed which may lessen the prominence of activity around the site, the character of the site would nevertheless be materially changed.
10. There is an existing mobile home on the site which is occupied during holiday periods by the appellant's family using the site. Inevitably this would give rise to some domestic activity on the site, however, it would not be the same as the level of daily activity that would arise from the permanent occupation of the site throughout the year. This does not alter my view on the harmful effect of the proposal.
11. Whilst there is linear development both along the vehicular section of Swains Lane and Swains Road, there is an absence of development on the northern side of the road where the appeal site is located, with the only property being Swains House. This is a detached house in substantial grounds and not part of linear development. It would therefore be out of character with the pattern of development.
12. The proposal would effectively extend the built-up area so that the coastal path would pass between areas of domestic development on both sides, rather than

around the edge of the settlement as it does now. This would harm the character of the route.

13. The appeal proposal for a substantial single-storey building would additionally be at odds with established character of the area. There is considerable architectural variation, however, properties are mostly two-storey and finished in brickwork or render. Whilst the detached dwelling within the plot would bear some resemblance to those opposite, the use of timber cladding and a single-storey appearance would not relate to their character. Although the building would not be visually prominent, it would be seen and it would appear incongruous with the surrounding development. This would also cause some harm to the character and appearance of the area.
14. The proposed development would be harmful to the character and appearance of the area. It would therefore conflict with Policies SP1, SP5 and DM2 of the Island Plan Isle of Wight Core Strategy 2012 (the Island Plan) and the Bembridge Neighbourhood Development Plan. It would also not accord with the design objectives of the National Planning Policy Framework (the Framework). These policies together seek to protect, conserve and enhance the Island's built environment, requires development on non-previously developed land adjacent to settlement boundaries to enhance the character and context of the local area.

Bembridge Conservation Area

15. The appeal site lies within the Bembridge Conservation Area (BCA) within the character area, described as the 'Coastal Edge'. The BCA Conservation Area Appraisal 2011 describes the area as peaceful, green and grand with a strong landscape character. This is in part attributed to the large properties laid out in landscaped grounds, dispersed across the coastal slope. Private space within the area is strongly defined by high, long boundaries providing a high level of enclosure and privacy. The arboreal and verdant character of the area is also an important characteristic of the area.
16. The absence of significant development contributes to the spacious character of this part of the BCA. The appeal site due to it being largely undeveloped and enclosed by mature trees, contributes to the spacious and verdant character of the area with its high and long boundaries being features of the BCA. In this regard, the site contributes to the significance of the BCA.
17. The footprint of the proposed dwelling would occupy a substantial portion of the wider site, this would be at odds with the substantial and spacious dwellings set within large and landscaped grounds, characteristic of the coastal edge. It would also be visible, although not prominent, within an area of land characterised by the absence of development. This, along with the activity associated with a permanently occupied dwelling, would erode the spacious and undeveloped character of this part of the BCA which contributes to its significance.
18. As such, the proposal would fail to preserve or enhance the character or appearance of the BCA and would harm its significance. I attach considerable importance and weight to the desirability of avoiding any such harmful effect in accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

19. The harm the proposal would cause to the significance of the BCA would be less than substantial. Paragraph 202 of the Framework states that where a proposal would lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.
20. The proposal would provide a single dwelling which would be constructed to meet Passivhaus standards, thereby significantly reducing its environmental impact. A contribution to affordable housing would also likely be secured through the submitted UU. In addition, some ecological enhancement of the site may be achieved. Some additional management of the site may be achieved thereby maintaining the quality and contribution of the site to the locality, although there is no substantive evidence to demonstrate that this can only be achieved through permanent occupation of the site. Additional landscaping may enhance the verdant character of the site.
21. Overall, whilst the scheme would deliver some economic, social and environmental benefits associated with the construction of a dwelling, this is a single house and the public benefits are very modest. This leads me to conclude that the public benefits of the scheme would not outweigh the less than substantial harm to the significance of the BCA that would arise.
22. I therefore conclude that the proposed development would fail to preserve or enhance the character or appearance of the BCA. It would therefore conflict with Policies DM2 and DM11 of the Island Plan which together require development proposals to conserve and enhance the special character of the Island's historic environment and to complement the character of the surrounding area, particularly in conservation areas. It would also conflict with the objectives of the Framework for conserving and enhancing the historic environment.

Trees

23. There are a number of trees around the perimeter edge of the site in a mix of species, covered by a Tree Preservation Order¹. These trees contribute to the character and appearance of the area when viewed from the surrounding roads and footpaths. They also contribute to the significance of the BCA as I have outlined above.
24. The appellant has submitted an Arboricultural Report (the AR) which includes a tree survey and arboricultural impact assessment. The tree report categorised trees based on guidance in British Standards (the BS)². The AR has shown that no trees would be removed to accommodate the proposed dwelling nor would they be in such close proximity to it as to cause concerns for future occupants that could lead to their removal or reduction.
25. The AR identifies a group of trees comprising horse chestnut trees and holm oak trees along the south-western boundary of the site. This group, identified as group G3, are categorised as grade C and of low quality based on the BS. The Council has not disagreed with this assessment. Irrespective of the quality of these trees, they contribute to the verdant character of the area.
26. The proposal includes the relocation of the existing wooden sheds to within the root protection areas of this group of trees. This could adversely affect their

¹ The County of the Isle of Wight (East Wight) Tree Preservation Order, 1956

² BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations

long-term health and viability as well as potentially requiring some pruning, thereby reducing their contribution.

27. The AR does not address the impact of either the relocation of the sheds nor matters in relation to access to the site for construction purposes. It is noted that the appellant has indicated that materials may be craned in.
28. The appellant has suggested that it would be reasonable to impose a condition requiring the agreement of the positioning of the garden sheds as part of a landscape plan to be agreed prior to the commencement of the scheme. I agree this would be a reasonable approach and I am satisfied that there is adequate space within the plot to enable this to be achieved. However, it is not evident what the effect on trees may be should materials be craned into the site.
29. In the absence of sufficient information, I must take a precautionary approach. It has not been demonstrated that the proposal would not adversely affect trees on the site. I therefore conclude that the proposal would conflict with Policies SP5 and DM12 of the Island Plan which seek to protect, conserve and enhance the landscape and the Island's natural environments. It would also conflict with the Framework which recognises the contribution trees make to character and seeks their retention wherever possible.

Safe access for construction

30. The site does not have direct access to the public highway, which is indicated to be some 9m from it. The location of the highway is at a four-way intersection between the highway, a private road and the Coastal Path, a public right of way (PRoW), which runs around two of the site's boundaries.
31. The appellant proposes that construction materials are offloaded on the highway and delivered by hand. Whilst this may be technically possible, it would be labour intensive and, in all likelihood, a slow process. It would also involve materials being transported across the PRoW. It seems to me that this would be likely to lead to congestion in this location but, of greater concern, an increased risk of conflict for users of the PRoW as well as potentially the public highway and private road.
32. As an alternative, the appellant has indicated that materials may be craned in. It seems to me that this would also require the stationing of a vehicle or crane on the highway or the PRoW, and thus the potential increased risk of conflict for users of the route would similarly arise.
33. In the absence of information about how access to the site would be managed, I am unable to conclude that satisfactory access to the site during construction could be provided. The appellant has suggested that such matters could be addressed through the provision of a construction environmental management plan which could be secured through a planning condition. I appreciate that in certain cases such conditions can be imposed, however, the circumstances here indicate that such matters should be addressed at this stage given my concerns outlined above.
34. I therefore conclude that satisfactory access to the site during construction has not been demonstrated, in the absence of which I find that the PRoW would be adversely affected albeit for a limited period during construction. The scheme would therefore conflict with Policies DM2 and DM17 of the Island Plan which

together require relevant information according to the site's location and context to be provided and for proposals to provide and improve accessibility.

Protected habitats sites

35. The appeal site is in the Solent Region where there are a number of internationally designated sites, it is also located within the 5.6 kilometre buffer zone around the Solent and Southampton Water SPA. 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.
36. 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.
37. Any new residential development within this area is likely to have a significant effect on the designated sites as a result of increased recreational pressure from future occupants. To avoid such harmful impacts, mitigation would be required. The Solent Recreation Mitigation Strategy 2017 sets out the mitigation measures required from new dwellings and a sliding scale of developer contributions based on property sizes.
38. The submitted UU makes provision for mitigation in the form of a financial contribution which the Council has indicated would be likely to address its concerns in respect of mitigation from recreational impacts.
39. Additionally, recent advice issued by Natural England has identified that The Solent is in an unfavourable condition due to excessive nitrogen inputs into the water environment causing eutrophication of the designated sites, and adversely impacting on the protected habitats. Natural England has advised that the wastewater arising from additional housing that, once treated, discharges into the SPA is likely to contribute further to these adverse effects and therefore avoidance measures are required.
40. The Council has issued a position statement in respect of nitrogen neutral housing development (April 2022). This states that, if a proposed development will connect to the public sewer, then the applicant should gain written confirmation from Southern Water that it would drain to either Sandown, Brightstone, Shorwell or St Lawrence Wastewater Treatment Works (WwTW). This is because treated effluent from these WwTWs outfall into the English Channel rather than The Solent and would not therefore contribute to the adverse effects on the SPA. In these circumstances the Council will impose a planning condition to secure this in perpetuity.
41. In the event I were to allow the appeal, the Council has suggested a pre-commencement planning condition to secure a scheme for drainage and disposal of surface and foul water which would require foul drainage to be connected to the public sewer and for it to be served by the Southern Water WwTW at Sandown.

42. Given the guidance set out in the Council's position statement, I accept that, in principle, this could provide the required mitigation by avoiding adding any additional nutrients to the Solent.
43. The application form states that it is unknown how foul sewage is to be disposed of. In view of this, and in the absence of firm evidence that foul water drainage would connect to the Sandown WwTW, I cannot be certain that any mitigation secured through the proposed condition would be achievable. 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.
44. Notwithstanding the Council's position on these matters, as the competent authority and 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 including the effectiveness of any proposed mitigation. Had I been minded to allow the appeal, I may have sought further information to enable me to do this. However, as I am dismissing for other reasons this had not been necessary.
45. Given my findings, I therefore conclude that the proposal would adversely affect protected habitats sites. It would therefore be in conflict with Policy DM12 of the Island Plan and the Framework which together seek to protect the integrity of internally designated sites. I have found no specific conflict in respect of this main issue with Policy DM2 of the Island Plan which sets out design considerations.

Ecology

46. The application was supported by a Tree Bat Survey³ (the TBS) which identified the potential for roosting bats to be impacted by the development. It concluded that some trees offer roost potential and may therefore require detailed inspection. These are identified as two dead *Macrocarpa* trees (Monterey cypress) in the southern boundary, adjacent to the public footpath, and ivy covered trees along the western boundary.
47. I note the AR recommends that dead and dying trees are felled within tree group G4 along the southern boundary. This group comprises Monterey cypress, which appear to be the same trees referred to within the TBS as have bat roost potential. However, these trees are neither required to be removed to accommodate the development nor in relation to any works to accommodate construction, as they are set well away from either the public highway or private road from where a crane, if required, could operate.
48. I accept that the trees may be removed as occupants of the site may not wish to reside in close proximity to dead or dying trees. However, this could happen on the basis of the existing use on the site and not as a consequence of the proposed development. The proposed development would not therefore impact on these trees.
49. The AR proposes no works to trees on the western boundary of the site which are sited some distance from the proposed dwelling. There is no evidence to suggest that these trees, with potential for roosting bats, would be harmed by the proposal

³ Method Statement Tree Bat Survey June 2019

50. I conclude that the proposed development would not harm protected species. It would therefore accord with Policies SP5 and DM12 of the Island Plan which together support proposals that conserve biodiversity. It would also comply with the Framework which seeks to enhance the natural environment and minimise impacts on biodiversity.

Other Matters

Affordable Housing

51. Policy DM4 of the Island Plan sets out that the Council will seek to deliver around 1,790 affordable homes over the plan period. For small scale schemes such as this, the policy requires a financial contribution towards affordable housing. The Affordable Housing Contributions Supplementary Planning Document 2017 sets out the details of the financial contribution based on property values.
52. The submitted UU would provide a contribution calculated on the basis of the approach set out within the SPD. This would appear to meet the requirements of Policy DM4. Had I been minded to allow the appeal, I would have sought further information from the Council as to whether or not the submitted UU met this requirement. However, as I am dismissing for other reasons this has not been necessary.

Other considerations

53. The appellant has suggested that since the proposed development would be adjacent to a settlement boundary it would not conflict with the spatial strategy in terms of the location of development. Under Policy SP1 of the Island Plan, proposals on greenfield land in such locations need to demonstrate that deliverable previously developed land is not available and an identified local need will be met. No evidence to demonstrate this requirement has been met has been submitted. I can therefore give this very limited weight.
54. I do, nonetheless, find that the location, just outside the defined settlement, means the proposed development would be within a reasonably accessible location, with access to local facilities by way of foot, public transport and cycle routes. These are factors that weigh in favour of the scheme.
55. The appellant considers the only sustainable way to secure effective long-term management of the site, for the benefit of maintaining and enhancing its appearance as well as encouraging biodiversity would be through the permanent occupation of the site. This is disputed by interested parties who state it is managed by local contractors. I have no firm evidence of this, nevertheless, it seems to me that it would be possible to secure the long-term maintenance of the site through such arrangements. This does not therefore justify the proposal.
56. The proposed dwelling would be designed using low carbon sustainable energy efficient measures, including air-source heat pumps, photovoltaic solar panels, use of sustainable materials and designed to Passivhaus standards for heat retention, low energy usage and temperature regulation. Whilst these are all positive aspects of the scheme, a number of these measures are already required through recent changes to Building Regulations. This aspect of the scheme does not outweigh the harms I have identified.

Planning Balance and Conclusion

57. The Council cannot demonstrate a five year supply of deliverable housing sites. This is not disputed. Paragraph 11 d) i) of the Framework states that where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, the presumption in favour of sustainable development does not apply. Footnote 7 identifies both habitats sites and heritage assets as particularly important. Consequently, harm to both of these is sufficient reason to reject the proposal.
58. In addition to the harm to protected habitats sites and a heritage asset, I have also found that the proposal would be harmful to the character and appearance of the area and trees, and would adversely affect a PRow. Whilst I have concluded that it would not harm protected species this is a neutral factor. The proposed development would be in a reasonably accessible location and would provide a small number of benefits, in terms of its contribution to housing stock and green credentials. However, these are not sufficient to outweigh the harm I have found.
59. I find that the proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

Rachael Pipkin

INSPECTOR