



Appeal Decision

Site visit made on 6 December 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2023

Appeal Ref: APP/P2114/W/21/3281838

Friends of the Animals, 162 Gunville Road, Newport PO30 5LS

- 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 William Garnett against the decision of Isle of Wight Council.
 - The application Ref 21/01172/FUL, dated 24 May 2021, was refused by notice dated 28 July 2021.
 - The development proposed is demolition of existing premises and construction of a pair of semi-detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing premises and construction of a pair of semi-detached dwellings at Friends of the Animals, 162 Gunville Road, Newport PO30 5LS in accordance with the terms of the application, Ref 21/01172/FUL, dated 24 May 2021, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appellant submitted an executed unilateral undertaking (UU) dated 27 July 2021. It relates to financial contributions in respect of the recreational impacts of the proposed development on the Solent Special Protection Area (SPA) and for the provision of affordable housing. The appellant's second UU dated 13 April 2022 increased the financial contribution for the SPA. The Council has confirmed that each UU is acceptable to it and overcomes its reasons for refusal 3 (in part) and 4. I have taken both UUs into account in reaching my decision.
3. During the appeal the Council provided an updated Isle of Wight Position Statement: Nitrogen neutral housing development January 2023. The appellant was given an opportunity to comment on this document. I have taken comments received into account in reaching my decision.
4. There are inconsistencies between the floor and elevation plans in relation to the provision of a second floor staircase window in the north and south side elevations. I have determined the appeal on the basis of the elevations which exclude these windows and in so doing am satisfied that no prejudice has been caused to any person.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the area;

- whether a safe vehicle access would be provided; and
- the effect of the proposal on the Solent Special Protection Area.

Reasons

Character and appearance

6. The appeal property is a turn of the last century detached building. It comprises a ground floor shop with a flat above over two floors, partly in a steeply pitched front facing gabled roof. It is at one end of a row of semi-detached houses along this side of Gunville Road to the north. These houses are simple in appearance and form, including largely uncluttered roofs and a regular pattern of fenestration which gives a sense of rhythm and uniformity to this part of the streetscene. It is distinctly different to a varied row of dwellings to the south, beyond an undeveloped vacant plot¹, and the more modern housing lining the other side of the road with the imposing Carisbrooke & Gunville Methodist Church and Church Hall opposite the site.
7. The proposal seeks to replace the existing building with a pair of semi-detached three-bedroom houses. It would result in less footprint and overall built form in-depth on the site and though set back further from the road the houses would follow the general building line. However, although designed only slightly taller to eaves than the existing building or the adjoining semi-detached houses at Nos.164 and 166 Gunville Road, the proposed houses would be innately taller to ridge level, accentuated by the lower ground level of Nos.164 and 166. In addition, the wide pitched roof with gabled ends would have more built form at a high level facing the road than the appeal property or Nos.164 and 166. Despite the proximity of the Church and Church Hall, the proposed houses would be prominent on the site.
8. The front and rear dormers would be relatively small, well-proportioned in relation to the roof area and albeit above eaves level sit well below the ridge. Taken in isolation they would not add significantly to overall bulk and massing and be an acceptable feature of the proposed houses. Those at the rear would not be unduly conspicuous. However, none of the semi-detached houses to the north have front dormers, nor do nearly all of the other houses along this stretch of Gunville Road. These dormers would therefore be out of keeping with the prevailing pattern of built form at roof level in the streetscene.
9. The front and rear elevations of each house would have two ground floor windows and one bedroom window above. Whilst the bedroom window would align with the dormer, the ground floor windows would not align with either upper floor window. Furthermore, the different proportions of the windows at ground and first floor level results in an awkward, unbalanced fenestration arrangement and gives a squat impression to the lower part of each house. This does not reflect the sequence of fenestration in the adjacent semi-detached houses or indeed in most houses nearby.
10. The set-back of the houses behind the side of No.164 would limit longer distance public views of them from Gunville Road to the north. They would, though, be in plain sight in closer views and in longer distance views as the road rises to the south.

¹ Subject to a planning application for residential development 19/01544/OUT

11. The site is not in an area subject to any specific design or character designation and appropriate materials for external surfaces could be secured by a planning condition. Nonetheless, I find that the proposal would cause limited harm to the character and appearance of the area. Consequently, it conflicts with Island Plan (IP)² policy DM2 which includes that development should complement the character of the surrounding area and maintain a sense of place.

Vehicle access

12. Gunville Road is a local distributor road subject to a 30mph speed limit. A build-out in front of the site, which also provides an uncontrolled pedestrian crossing point, narrows the carriageway to single file. Traffic gives way from the north when necessary. There is an existing vehicular access to a shallow apron in front of the appeal building where there is space for up to 3 cars to park. This access does not comply with the highway authority's standards because visibility is restricted to the north by a front garden boundary and cars either have to reverse out onto the road or reverse onto the apron from the road. Though not ideal these circumstances already exist and though currently vacant the shop and the flat could lawfully resume at the site at any time.
13. The highway authority and the Council do not object in principle to works to the adopted highway to widen the existing access. It is agreed that this would be a betterment. The highway authority has suggested heads of terms for these works and the appellant agrees to this approach. A negatively worded 'Grampian' planning condition could secure these works prior to either house being first occupied.
14. The highway authority has suggested that some customers of the shop might have parked in roads nearby instead of the apron. However, even if some did, up to 3 cars for the shop or flat could have used the access to park in the apron. The highway authority agrees that the potential level of daily traffic movements generated by the shop and the flat could be comparable to the two proposed houses. There is no record of road accidents in this part of Gunville Road in the 3 years prior to June 2021. Moreover, the build-out would continue to give some protection to cars entering the road from the site, or vice versa, by increasing visibility to the north and encouraging lower vehicle speeds in this nearside direction. Permanent residents of the houses would become accustomed to these arrangements unlike short-stay customers of the shop.
15. The houses would be near bus stops and some local facilities and services. It is agreed that providing 2 car parking spaces within the site would therefore be acceptable. These could be secured and retained for that purpose by a planning condition. The front boundary of the site does not run along the back edge of the pavement. However, parked cars would be further away from the pavement and so less of a hazard to pedestrians. There is no objective evidence that restricting both spaces to one of the houses, as the highway authority has suggested, would materially, or at all, reduce the potential for vehicular conflict.
16. I find that the proposal would not be prejudicial to highway safety. As such, it complies with IP policy DM2 which includes that development should provide a functional and safe environment. The Council has also cited IP policy DM17 but it is not relevant because it relates to increased travel choice.

² Isle of Wight Core Strategy March 2012

The Solent Special Protection Area (SPA)

17. The site is within a zone of influence of the coast and water environments of the SPA, a European site designated to protect important habitat for bird species. A significant individual or in-combination adverse effect on the SPA would be likely to occur from residential development due to disturbance from increased population in an area where inhabitants would be in such proximity to the SPA that they would be likely to visit it for recreational purposes or due to increased nitrates if foul wastewater entered the Solent exacerbating eutrophication.
18. In consultation with Natural England (NE) the Council has adopted the Solent Recreation Mitigation Strategy December 2017 (SRMS). The SRMS requires a financial contribution towards strategic access management and monitoring measures to control such activity in the SPA, including suitable alternative natural greenspace for residents to use. The Council has provided a detailed explanation of the SRMS and the basis on which the mitigation is sought. This includes justification for the respective levels of tariffs and the administrative arrangements for receipt and effective and timely use of financial contributions for these purposes. The Council has confirmed that the relevant provisions of the appellant's first UU together with the second UU accord with the SRMS, based on a net gain of one dwelling.
19. I am therefore satisfied that the UUs are necessary, directly related to the development and fair and reasonable in scale and kind. As such they accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (Regulations) and the National Planning Policy Framework (Framework) tests for planning obligations. The Council's Habitats Regulation Assessment considers that the proposal would provide appropriate mitigation and not adversely affect the integrity of the SPA. As the competent authority in this appeal I am satisfied that with regard to recreational impacts, and after appropriate assessment, suitable mitigation would be secured to protect the SPA.
20. Further to advice from NE the Council has adopted the Isle of Wight Position Statement: Nitrogen neutral housing development January 2023 (PS). Amongst other things, the PS sets out that provided foul wastewater from residential development on the Island enters the English Channel, not the Solent, then there would be no likely adverse effect on the SPA so no need for mitigation.
21. The Council's suggested negatively worded Grampian planning condition would ensure that the new houses connect to the Southern Water (SW) public foul sewer that serves the existing building. SW has confirmed in writing that this sewer discharges to its Wastewater Treatment Works at Sandown which outfalls into the English Channel. The condition would require these works to be completed prior to occupation of the houses and retained thereafter. On this basis the Council considers that the proposal would comply with the PS and not adversely affect the integrity of the SPA. I am satisfied that subject to the imposition of the Grampian condition referred to above, there would be no likely significant effects on the SPA arising from additional nitrates.
22. Accordingly, taking all of the above into account, I find that the proposal would not adversely affect the integrity of the SPA. Consequently, it complies with IP policies DM2 and DM12 which include that development should protect and

conserve the environment and avoid adverse effects on the integrity of designated biodiversity sites.

Other Matters

Affordable housing (AH)

23. The Framework sets out that AH should not be provided in minor residential development. However, the Council has demonstrated that the lack of delivery of AH is a significant issue on the Island³. It has justified a need to increase AH via IP policy DM4 including by development of small sites, having taken account of viability. I consider that these local circumstances outweigh these provisions of the Framework in this appeal.
24. In the first UU a financial contribution would be made to the Council to help it increase the supply of AH on other sites. The Council has explained the level of contribution sought and the administrative arrangements for receipt and effective and timely use of the financial contribution for this purpose. I am therefore satisfied that this aspect of this UU would be necessary, directly related to the development and fair and reasonable in scale and kind. As such it accords with the provisions of the Regulations and the Framework tests for planning obligations.

No.164 Gunville Road

25. The occupiers of No.164 are concerned that a ground floor living room window and a first floor staircase window in the north side elevation of one house would face towards windows at their house and cause loss of privacy. However, a suitable means of enclosure along the north boundary of the site, such as a wall or fence, would prevent intervisibility between ground floor windows. Although not a habitable room there would be a perception of overlooking from the staircase window but this could be alleviated by using obscured glazing with only a top opening fanlight. I am satisfied that both concerns could therefore be addressed by imposing conditions if the development was acceptable in all other respects.
26. Damage to private property from construction works associated with new development or its effect on private means of access are not within the scope of this appeal or my decision. Such matters would be for the respective parties.

Planning Balance

27. The appellant states that at 54% the Council has failed the Housing Delivery Test (HDT). In these circumstances, and having regard to the Framework, this suggests that the delivery of housing on the Island was substantially below the housing requirement (ie less than 75%) over the previous three years. The Council has not disputed this. Accordingly, paragraph 11 d) of the Framework is engaged. For the reasons explained earlier above the SPA does not provide a clear reason for refusing the proposal. There are no other reasons why the provisions of paragraph 11 d) i) should apply, so I need to consider the 'tilted balance' in paragraph 11 d) ii). The starting point is that planning permission should be granted.

³ Affordable Housing Contributions Supplementary Planning Document March 2017

28. Through the Framework the Government seeks to significantly boost the supply of housing and meet people's needs for AH. The proposal would make efficient use of a small windfall site within an existing settlement by replacing a vacant shop and flat with two 3-bedroom houses, albeit a net gain of one new home. It would also make a small contribution to the provision of AH on the Island. These are appreciable social and economic factors in favour of the proposal.
29. On the other hand, although I have found no harm to highway safety, the design of the houses would cause some limited harm to the character and appearance of the area. This conflicts with objectives of the Framework to achieve well-designed places. This environmental consideration weighs against the proposal.
30. However, given that the Council has failed the HDT, I do not consider that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. Accordingly, the presumption in favour of sustainable development applies in this case.

Conditions

31. The appellant raised no objection to any of the conditions suggested by the Council in the event that the appeal was allowed. I have obtained his written agreement to a pre-commencement of development condition relating to foul drainage and the SPA, which the Council did not comment on. This is an important aspect of the proposal for the reasons set out earlier, so there is a clear justification to secure these details before any development commenced.
32. Where required, I have considered modified wording of the other suggested conditions that I have referred to earlier, in the interests of clarity, and have had regard to the relevant tests in the Framework and advice in Planning Practice Guidance.
33. It is also necessary to attach conditions to specify the standard implementation time limit and the approved plans to provide certainty. It is also reasonable to impose restrictions on working hours during construction to protect the living conditions of neighbours. I have obtained the agreement of the appellant to this additional condition, as well as conditions relating to the off-site highway works and boundary treatments. The Council did not comment on these conditions.

Conclusion

34. The proposal conflicts with the development plan overall. However, there are other considerations, including the provisions of the Framework which override this finding and indicate that the decision should be taken other than in accordance with the development plan.
35. Consequently, for the reasons given above, subject to conditions, the proposal is acceptable and the appeal succeeds.

Robin Buchanan

INSPECTOR

Schedule of Conditions (9)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) With the exception of the staircase windows shown in the floor plan of the second floor, the development hereby permitted shall be carried out in accordance with the following approved plans:

21-843-01 Rev B site plans (location plan, existing and proposed streetscenes, existing and proposed block plans)

21-843-02 Rev A floor plans and elevations (as proposed)
- 3) No development or site preparation, including demolitions, groundworks or site clearance, 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 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 retained thereafter.
- 4) No part of the houses hereby permitted shall be constructed above foundation level until details and samples of materials for external surfaces and finishes of the houses 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) Prior to first occupation of the houses hereby permitted the works shown in the approved site plans (drawing numbers 21-843-01 Rev B and 21-843-02 Rev A) to widen the existing vehicular access and drop kerb shall be implemented in accordance with details to be submitted to and approved in writing by the local planning authority.
- 6) No house hereby permitted shall be first occupied until space has been laid out within the site for 2 cars to be parked in accordance with details, including drainage and surfacing materials, to be submitted to and approved in writing by the local planning authority. This space shall be retained thereafter and not used for any other purpose.
- 7) No house hereby permitted shall be first occupied until details for boundary treatments have been submitted to and approved in writing by the local planning authority and the approved details have been carried out. The boundary treatments shall be retained thereafter.
- 8) Prior to first occupation of the house annotated as 'unit 1' in the approved plans, the first floor landing window in the north (side) elevation shall be fitted with obscured glass which has been rendered obscured as part of its manufacturing process to Pilkington glass classification 5 (or equivalent glass

supplied by an alternative manufacturer), of which the cill of the only opening section shall be 1.7m above finished floor level. This window shall be retained to this specification thereafter.

- 9) Construction works and deliveries, including site preparation, demolitions, groundworks or site clearance shall take place only between 0800 and 1800 Monday to Friday and between 0800 and 1300 Saturday and shall not take place at any time on Sunday or on Bank or Public Holidays.