



Appeal Decision

Site visit made on 1 February 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Appeal Ref: APP/L1765/W/22/3308026

Cartref, Sutton Wood Lane, Bighton, Hampshire SO24 9SG

- 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 R and Mrs G Williams against the decision of Winchester City Council.
 - The application Ref 22/01333/FUL, dated 16 June 2022, was refused by notice dated 16 September 2022.
 - The development proposed is the demolition of the existing house and outbuildings and construction of a replacement house and associated garaging.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing house and outbuildings and construction of a replacement house and associated garaging at Cartref, Sutton Wood Lane, Bighton, Hampshire, SO24 9SG in accordance with the terms of the application, Ref 22/01333/FUL, dated 16 June 2022, subject to the attached schedule of conditions.

Preliminary Matters

2. During the appeal, amended plans were submitted with a modified redline site boundary. The amendment relates to the inclusion of a separate strip of land within which a public right of way is located. As the amendment comprises a reduction in the overall site area and no changes have been made to the proposed development, I do not consider taking account of these plans within my decision would prejudice any interested party.
3. I observed, during my site visit, that several trees had been felled on the appeal site. Based on the information before me, these relate to a recently approved application for works to trees protected by a Tree Protection Order¹ (TPO).
4. The site is located within the catchment of The Solent Special Protection Area (SPA). Although not an issue raised by the Council, it is incumbent upon me as the competent authority to consider whether the proposed development would be likely to have a significant effect on the integrity of the SPA. Comments were sought from the main parties and Natural England, and I have taken them into account in my reasoning. Therefore, neither party would be prejudiced by this matter being dealt with as a main issue.

¹ Application ref: 22/00982/TPO dated 4 July 2022

Main Issues

5. The main issues are:

- the effect of the proposed development on the stock of smaller dwellings in the countryside; and
- whether the proposed development would be likely to have a significant effect on the integrity of the SPA.

Reasons

Availability of smaller dwellings

6. As the appeal site comprises a dwelling located within the countryside, Policy DM3 of the Winchester District Local Plan Part 2 – Development Management and Site Allocations (2017) (LPP2) is relevant. This policy seeks to retain the existing stock of smaller dwellings in the countryside by limiting the scale of extensions and replacements permitted to such dwellings. Smaller dwellings are defined as comprising up to 120sqm gross floorspace at either the date the LPP2 was adopted (April 2017) or when originally constructed, whichever is later. As the appeal property was built before this date, the gross floorspace as at April 2017 is relevant. Both main parties agree this is 94.5sqm. Therefore, for the purposes of Policy DM3, the appeal property is a smaller dwelling.
7. Policy DM3 permits extensions up to 25% of the original size of a smaller dwelling in the countryside. The resultant overall area also applies to a replacement dwelling. The main parties agree, in respect of the appeal property, that Policy DM3 would permit an overall size of 118sqm and that, as the proposed development would total 293sqm, it would exceed this figure.
8. Accordingly, I conclude that the proposed development would lead to a reduction in the stock of smaller dwellings in the countryside and would conflict with Policy DM3 in this respect.

Integrity of the SPA

9. The special interest of the SPA results from the various birds supported by the habitat, particularly during the winter months. The protection of the SPA seeks to ensure that migratory birds can feed undisturbed whilst they build up energy reserves to survive the winter before journeying back to their breeding grounds. One of the main issues preventing the SPA from meeting this objective relates to an increase in wastewater being discharged into The Solent, including pollutants or nutrients, such as nitrates and phosphates, which affect water quality. This process, known as eutrophication, can speed up the growth of certain plants, threatening the aquatic ecosystem by damaging the SPA's plants and wildlife.
10. Given the public body's statutory purpose to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, I have sought the views of Natural England regarding the proposed development. As it relates to a replacement dwelling, it would not increase overnight accommodation. Consequently, the proposed development would not cause any likely significant effects on any designated site or sites, either alone or in-combination with other plans and projects. It is, therefore, not necessary for me to undertake an appropriate assessment and I conclude

that the development would not result in an adverse effect on the integrity of the SPA, in accordance with the Habitat Regulations.

Other Matters

11. The Officer Report sets out that the appeal scheme would not be appropriate to its setting, given its lack of domestic appearance. Whilst the report refers to the failure of the appeal scheme to accord with the development plan in other respects, no other reasons for refusal were included on the decision notice. Moreover, given the appeal site's countryside environment, with a combination of residential, agricultural and tourism uses nearby, the barn-like appearance of the appeal scheme, in my view, would not be out of character in the area. It would, therefore, accord with Policy CP13 of the Winchester District Local Plan Part 1 – Joint Core Strategy (2013) (LPP1) and Policy DM16 of LPP2 which, in combination, seek to ensure high standards of design are secured through a design-led approach.
12. Several public benefits would arise from the proposed development, including the social and economic benefits from the construction and occupation of a replacement dwelling on a currently vacant site. The demolition of the existing derelict outbuildings would also enhance the site and the surrounding area. Given its central position within the appeal site and the distance to the nearest dwellings, the proposed development would not result in harm to the living conditions of neighbouring occupiers, as acknowledged in the two letters of support from occupiers of a nearby property. The replacement dwelling would also be built using modern methods of construction that exceed energy, water efficiency and insulation requirements, and benefit from a heat pump. A commitment has also been made to recycle materials from the demolition works, either on site or via the demolition company selected, and the potential to incorporate solar panels as part of the proposed development. Finally, the proposed development would be constructed by the appellant, as a self-build property, for the benefit of their family. This is an approach supported by the National Planning Policy Framework (the Framework).
13. In addition to retaining smaller properties in the countryside, Policy DM3 of the LPP2 is also seen as an important component of maintaining a supply of relatively affordable dwellings. Whilst 'affordable' in this context is defined as being relative to the market price that may be achieved in an unfettered development, given the substantial size of the appeal site, in comparison to the property's floorspace, and confirmation of its sales price from February 2022. Additionally, a series of sales particulars have been provided relating to properties with much larger floorspace recently sold in the surrounding area yet sold for prices lower than the appeal site. Furthermore, due to the substantial renovations necessary to bring the existing property up to a habitable standard, significant costs are likely to be incurred. Consequently, I am not persuaded the appeal property meets the definition of affordable for the purposes of Policy DM3.
14. The Council has referred to the lack of certainty relating to the replacement tree planting on the site following the felling of several trees in poor condition. As such replacement trees are required by a condition imposed on the recently approved TPO application, their location and detail are subject to a different approval mechanism. However, details of the replacement trees could also be

- included in a scheme of hard and soft landscape works required by a condition attached to the grant of planning permission in respect of this appeal.
15. My attention has been drawn to a recently granted prior approval² under Class A of Part 1 of Schedule 2 of the GDPO³ comprising several extensions to the existing dwelling and that the appeal site benefits from a Certificate of Lawfulness⁴ for a similar scheme falling under permitted development. The total floorspace of the extended dwelling, should the prior approval development be implemented, would total 293sqm. This would, therefore, also exceed the amount permitted under Policy DM3 of LPP2.
 16. As confirmed in a Court of Appeal⁵ decision presented to me, for a scheme to be considered a 'fallback', there should be a real prospect that it would be constructed, regardless of the outcome of this appeal. Further, as set out in a High Court⁶ decision, it is necessary for me to adopt the two-stage approach to the issue of fallback. Firstly, based on the evidence before me, including the prior approval decision, Certificate of Lawfulness and the completed and signed self-build forms, I am satisfied that there is a real prospect, or greater than a theoretical possibility, that the prior approval development would be built, irrespective of my decision, and it represents a fallback. Given this, the second stage is to ascribe weight to this theoretical possibility.
 17. Both the fallback scheme and the proposed development would provide a dwelling comprising an overall floorspace that would conflict with Policy DM3. Both schemes would also provide similar public benefits which weigh in favour of either scheme. However, the main differences between the two schemes relate to the design of the proposed dwellings and their positions on the site.
 18. I have found that the barn-like appearance of the centrally positioned replacement dwelling would not harm the character and appearance of the area. In contrast, the fallback scheme would result in a significantly extended property comprising several additions to the existing dwelling of a scale and bulk that would consume its cottage-like character. Consequently, I conclude that the fallback scheme would be more harmful to the character and appearance of the area than the proposed development. Additionally, the location and orientation on the site of the existing dwelling limit the amount of natural light and ventilation possible, and the sustainability credentials of any renovations would be constrained by the fabric of the existing property.

Planning Balance

19. I have concluded that the proposed development would be contrary to the aims of Policy DM3 which seeks to protect the stock of smaller dwellings in the countryside, and I attach significant weight to this conflict. However, it is necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
20. The replacement dwelling would be of a similar size to the fallback scheme. It would provide a self-build dwelling, replace a currently uninhabitable property,

² Planning application Ref: 21/03275/PNHOU approved 2 February 2022

³ Town and Country Planning (General Development Permitted Development) Order 2015 (the GDPO)

⁴ Ref: 19/00203/LDP approved 30 April 2019

⁵ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

⁶ *Gambone v SSCLG* [2014] EWHC 952 (Admin)

and requires the demolition of derelict outbuildings. It would provide a positive enhancement of the character and appearance of the wider context and exceed current sustainability requirements. These benefits weigh in favour of the grant of planning permission for the proposed development. I have also found that the fallback scheme would be more harmful to the character and appearance of the area than the proposed development. This also weighs in favour of the replacement dwelling.

21. I am mindful that, given the appeal site benefits from the grant of prior approval, there is a theoretical possibility that both permissions could be implemented at the same time. However, the overlapping nature of the building footprints of the two schemes restricts the potential for this to occur. Furthermore, I am content that the partial implementation of both schemes is also unlikely. I, therefore, conclude that there are strong material considerations that weigh in favour of making a decision other than in accordance with the development plan.

Conditions

22. I have considered the Council's suggested conditions in light of advice contained within the Framework and the National Planning Practice Guidance (PPG). I have undertaken some minor editing, rationalisation and reordering, in the interests of precision and clarity. In addition to the standard time condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
23. I have imposed two conditions to safeguard the existing trees on and close to the site, including their long-term viability, and to preserve the character and appearance of the area. These require protective fencing to be erected prior to the commencement of development and in accordance with the approved Tree Protection Plan. Given the importance of trees in the area, I have imposed a condition requiring any further works to the retained trees to be agreed upon with the Council in writing.
24. To safeguard the character and appearance of the area, it is necessary to impose a condition requiring the proposed external materials to be approved by the Council. To ensure the long-term establishment, maintenance, and landscaping of the site is implemented in accordance with the approved details, I have also imposed a condition relating to hard and soft landscape works. There is no need for me to set out a detailed list of matters to be included in this condition to make them precise or enforceable. Instead, this condition allows the parties to agree on the content of the landscape schemes at the appropriate time of submission of details, based upon prevailing guidance and requirements then. I consider the agreement of these details need to be made prior to any development above foundation level, rather than prior to the commencement of the proposed development on site as suggested by the Council.
25. I have imposed a condition that requires the submission and approval of a Biodiversity Enhancement Plan that secures the necessary biodiversity enhancement measures, in accordance with the Ecological Appraisal Report (revision 0) dated 8 March 2022 prepared by Hampshire Ecological Services Ltd. As the types and use of lighting are set out within this report, it is not necessary to impose a separate condition stipulating the type of external

lighting, as suggested by the Council. Furthermore, these details can be satisfactorily agreed upon after the development has commenced, but prior to the occupation of the proposed dwelling.

26. Finally, I have imposed a condition requiring the proposed dwelling to meet energy efficiency and water consumption standards, in accordance with Policy CP11 of LPP1 and Chapter 14 of the Framework. These details are necessary prior to the occupation of the development, not before works start on site.
27. The Council's suggested conditions include a condition requiring development to be suspended in the event of any potential contamination being discovered on site. Given the existing residential use of the site and based on the evidence before me, there is no substantive reason to suspect a heightened risk of potential contamination on site. Therefore, this condition is not necessary to secure a satisfactory development, in the interests of the safety and amenity of future occupants of the dwelling.
28. I have not imposed a condition requiring details of the foul and surface water drainage works to be approved, as suggested by the Council. Given the use of the existing septic tank, the proposed dwelling will not be connected to the mains foul drainage. Details relating to surface water drainage works can be required by the Council as part of the scheme of hard and soft landscape works.
29. The Council has suggested that a condition is imposed removing permitted development rights on the site. Paragraph 54 of the Framework states that planning conditions should not be used to restrict permitted development rights unless there is clear justification to do so. Furthermore, the PPG advises that such conditions may not be reasonable or necessary. Given the existing trees on the site are already afforded protection via a TPO, I am not persuaded that exceptional circumstances exist that would justify the removal of permitted development rights in this case. Accordingly, I do not consider that this condition is necessary to make the development acceptable in planning terms.

Conclusion

30. Whilst I have concluded that the proposed development would conflict with the development plan as a whole, I have found that there are sufficient material considerations in this case for a decision to be made other than in accordance with the development plan. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Juliet Rogers

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Cartref – Site Location Plan
 - D-100 – Location Plan – amended plan (rev A)
 - D-111 – Site Plan as Proposed – amended plan (rev A)
 - D-210 – Cartref: Plans & Elevations as Existing
 - D-211 – Outbuildings: Plans & Elevations as Existing
 - D-220 – Floor Plans as Proposed
 - D-230 – Proposed Garage Plans
 - D-310 – Elevations as Proposed
 - AA/TPP-24.05.22– Tree Protection Plan
- 3) No development shall commence until protective measures, including fencing and ground protection, shall be installed, in accordance with the Arboricultural Method Statement and Impact Assessment (REF AA/AMS+AIA-26.05.22 prepared by Atworth Arboriculture Ltd) and located as shown on the approved Tree Protection Plan (REF AA/TPP-24.05.22). Once erected, the local planning authority shall be notified in writing. The approved fencing and ground protection shall be maintained and retained until all equipment, machinery, and surplus materials have been removed from site.
- 4) No arboricultural works shall be carried out other than those specified within the Arboricultural Method Statement and Impact Assessment (REF AA/AMS+AIA-26.05.22 prepared by Atworth Arboriculture Ltd) unless otherwise agreed in writing with the local planning authority.
- 5) No development above foundation level shall commence until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out strictly in accordance with the approved sample details, unless otherwise agreed in writing with the local planning authority.
- 6) No development above foundation level shall commence until a scheme of hard and soft landscape works is submitted to and approved in writing by the local planning authority. The development shall be carried out prior to the occupation of the dwelling in accordance with the approved details and retained thereafter.
- 7) All planting, seeding or turfing comprising the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwellings, or the completion of the development, whichever is sooner. Any planting found damaged, dead or

dying within a period of 5 years following planting or seeding shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority agrees any variation in writing.

- 8) A Biodiversity Enhancement Plan (BEP) shall be submitted to and approved in writing by the local planning authority. The BEP shall include details and locations of any enhancement provisions in accordance with the Ecological Appraisal Report (revision 0) dated 8 March 2022 prepared by Hampshire Ecological Services Ltd. Prior to the occupation of the dwelling, the biodiversity enhancement provisions shall be implemented in accordance with the approved details and retained thereafter.
- 9) Prior to the occupation of the development, details of energy performance and water efficiency measures shall be submitted to and approved in writing by the local planning authority. These energy performance measures shall be designed to achieve a minimum 19% improvement in the Dwelling Emission Rate over the Target Emission Rate. The water efficiency measures designed to ensure potable water consumption shall not exceed an average of 110 litres per person per day. The development shall be carried out in accordance with the approved details and thereafter maintained as such.

End of Schedule