



Appeal Decision

Site visit made on 9 March 2023

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2023

Appeal Ref: APP/L1765/W/22/3305693

Land South of Bereweeke Way, Winchester, Hampshire

- 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 Christies Hospital School Foundation Winchester against the decision of Winchester City Council.
 - The application Ref 21/00726/FUL, dated 5 March 2021, was refused by notice dated 18 March 2022.
 - The development proposed is erection of three two storey houses with associated parking and landscaping on surplus land at Peter Symonds College, off Bereweeke Way, Winchester.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposed development would: (a) be acceptable having regard to local and national policies seeking to safeguard the loss of open space; and (b) adversely affect the character and appearance of the area through the provision of ball stop netting.

Reasons

Loss of open space

3. The appeal site is located at the northern end of the existing Peter Symonds College Playing Fields and comprises a large, elongated section of open land which is separated from Bereweeke Way (to the north) by a mature screen of landscaping and trees. Whilst the whole of the appeal site forms part of the existing playing fields (sports ground), the western part of the site, to the rear of the existing Day Nursery, is not formally designated for any purpose. However, the eastern part of the appeal site is designated on the Policies Map to the Winchester District Local Plan Part 2 – Development Management and Site Allocations (April 2017) (LPP2) as a 'Protected Open Areas' to which policy DM5 applies.
4. Policy CP7 of the Winchester District Local Plan Part 1 – Joint Core Strategy (March 2013) (LPP1) states that the Council will seek improvements to the open space network and built recreation facilities within the District. The policy continues by stating that there will be a presumption against the loss of any open space, sports or recreation facility except where it can be demonstrated that alternative facilities will be provided or the benefit of the

development to the community outweighs the harm caused by the loss of the facility. The supporting text, at paragraph 7.47, states that the due to existing shortfalls in provision it is important that all existing open space areas and built sports facilities are retained and protected against development unless improvements can be achieved by relocating them. A similar approach is set out in policy DM5 of LPP2 in that it states that development will only be permitted on protected open areas where it accords with the development plan and is a proposal for a facility that is ancillary to the function of the open space, and the contribution of the open area to the character of the wider area is maintained or enhanced. The policy continues by stating that development may exceptionally be permitted where it can be demonstrated that the benefit to the community clearly outweighs the harm caused by the loss of all or part of the facility, and where options for developing elsewhere have been explored.

5. Both policies pre-date paragraph 99 of the National Planning Policy Framework (July 2021) (Framework) which states existing open space, sports and recreational building and land should not be built on unless an assessment has been undertaken to clearly show that the open space, buildings or land is surplus to requirements, or the loss resulting from the development is replaced by equivalent/better provision elsewhere, or the development is for alternative sports and recreational provision the benefits of which clearly outweigh the loss of the current or former use.
6. Dealing firstly with the Framework, the appeal proposal does not seek to replace the open area lost elsewhere and the proposal is for new market housing, and not alternative sports and recreational provision. Although the Appellant contends that the appeal site is surplus to requirements, I am not convinced that this is the case. I accept that, as set out in Sport England's consultation response, the proposal would not result in the loss of usable playing field space or prevent the continuing use of the existing football pitches or result in the loss of any other existing sport facilities. However, no assessment has been undertaken that clearly demonstrates that the land is surplus to requirements, in terms of, for example, whether it could be used to accommodate other forms of sport facilities and/or equipment.
7. The Council have referred to a previous planning permission for an artificial cricket pitch and practice nets on the appeal site. I appreciate that this permission dates from August 2013, but I understand it related to the western part of the appeal site. That permission was obtained on behalf of the Peter Symonds College and this part of the site, which is not designated under policy DM5, was clearly considered at the time not to be surplus to requirements. This permission is an indication, in my view, of the potential of that part and indeed the whole of the appeal site to still contribute towards the recreational needs of the College. There is no evidence to show that that specific need no longer exists or may not arise in the future or whether its use for other sports uses or for siting other outdoor equipment have been properly considered.
8. Moreover, paragraph 6.2.20 to LPP2 states that policy DM5 identifies and protects open areas that are important for one or more of the criteria listed in the policy. The parties are in agreement that the eastern part of the appeal site is protected for its important amenity and recreational value.

The latter is reaffirmed in the Council's Open Space Strategy (2022). Consequently, any assessment of whether the land is surplus to requirements must also consider whether it is surplus in terms of the important amenity role that it preforms. As I observed on site, the whole of the appeal site forms an integral part of the existing sports ground. The site's openness and mature boundary treatment to Bereweek Way make a significant contribution to its amenity value. Whilst I accept that only glimpsed views are possible of the appeal site from public vantage points, that factor does not diminish its amenity value or the contribution it makes as an open area to the appearance and local distinctiveness of this densely built-up part of Winchester. Furthermore, the Open Space Strategy states that the ward in which the appeal site is located is deficient both in terms of open space and recreation space/sports grounds when assessed against the standards in the development plan.

9. The Appellant has referred to the fact that the sports ground is not open to the public. That may be so, but neither the policies in the development plan nor in the Framework make that distinction. Indeed, paragraph 6.2.20 of LPP2 recognises that not all the areas covered by policy DM5 will necessarily have public access but that they still merit designation for other reasons, including their contribution to visual amenity and that some private sports grounds fall into that category.
10. Turning to policies CP7 and DM5, the appeal proposal does not include replacement alternative open space provision elsewhere; the proposal is not for a facility that is ancillary to the function of the sports ground; and the contribution of the open area to the character of the wider area would not be maintained or enhanced. Both policies also allow the loss of open space, sports and recreation facilities where it can be demonstrated that the benefit to the community clearly outweighs the harm that arises from the loss of all or part of the facility. In policy DM5 the premise is that development will, in these circumstances, only be allowed "*exceptionally*", provided options for developing elsewhere have been explored.
11. An assessment undertaken by the Appellant concluded that there were no alternative locations on the College site that could accommodate the proposed development. The Council have not challenged this analysis and there is no evidence before me that would lead me to reach a different finding. As to community benefits, the Appellant contends that these would be secured through new housing and the raising of funds from the sale of the appeal site for housing that the Foundation (that runs the College) can utilise towards its charitable objectives and Charitable Scheme. These could include the refurbishment of existing buildings including the science lecture theatre, which is used, for example, by the local Historical Association and for other public out of hours uses; to provide financial assistance to both existing and former students and young people living in Winchester; to provide grants to local primary schools for certain projects; and to facilitate lettings to local sports and other groups.
12. There is no definition of community benefits within the relevant policies to the development and I accept that the benefits secured by new development can be wide ranging. Even so, the majority of the benefits highlighted by the Appellant appear to relate to existing projects, events or uses that the Foundation already supports and funds in line with its

Charitable Scheme. Whilst it is inferred that the funds raised by the appeal proposal would assist in supporting these projects/events/uses there is no substantial evidence before me to demonstrate whether that would be the case or not and neither is there any evidence that would allow me to determine the value of those benefits and more so whether “*the benefit to the community clearly outweighs the harm caused by the loss*” of the open area (policy DM5 refers).

13. No specific schemes for the refurbishment of existing buildings have been identified, and there is no evidence before me to suggest that the funds from the proposal are essential to enable those works to take place or why the latter cannot be secured through existing funding. Overall, the benefits alluded to are general and ambiguous and in the absence of any specific projects that the funds would directly secure I am unable to identify any clear community benefits to weigh against the harm that would result from the loss of part of the protected open area.
14. In further support of this issue the Appellant has provided a Unilateral Undertaking (UU) dated 5 January 2023. This UU would come into effect on the grant of planning permission. Within the UU the Foundation covenants with the Council that the net proceeds of the sale of the appeal site will form part of the Foundation’s assets and that the income derived from such proceeds will be used by the Trustee’s for the benefit of the College and other beneficiaries in accordance with its Charitable Scheme.
15. I have reviewed the UU in relation to the three tests set out in paragraph 56 of the Framework, and the three statutory tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and also considered the submissions of the parties on this issue. Having done so, I find that it has not been demonstrated that the obligation is necessary or that it meets all the three tests in that: the size of the contribution has not been identified and it is not possible to establish whether this would be the right amount to mitigate the harm arising from the development; there are no provisions covering where the contribution would be spent and on what and when, meaning that it is not possible to establish whether this is directly related to the development or would mitigate the harm identified; and, the requirement for the contribution is not backed up or justified by a development plan policy and/or supplementary planning document.
16. In addition, there is a question over whether the UU is legally sound as there are no provisions confirming: when the contribution would be triggered and take effect; whether indexation would be applied to the sum; what safeguards are in place to address any disputes with the Council over the way in which the funds are used; and, whether it is capable of being enforced. In relation to the latter, I am not convinced that the ‘obligation’ is actually an obligation as the UU covenants that the proceeds of the sale of the appeal site would be used by the Appellant and not paid to the Council. This does not, in my view, fall within the scope of section 106 (1) (a) to (d) (inclusive) of the Town and Country Planning Act 1990 (T&CPA) and would specifically fall outside part (d) which enables any person with an interest in the land to enter into an obligation “*requiring a sum or sums to be paid to the authority on a specific date or dates or periodically.*” The UU covenant would thus not be a planning obligation but a personal undertaking by the Appellant and would thus not be enforceable under

section 106 (3) & (5) of the T&CPA. For all the above reasons, I have not, therefore, attached any weight to the UU.

17. Accordingly, I find that the appeal proposal would result in the loss of protected open space without clear justification and would thus be contrary to policy CP7 of LPP1 and policy DM5 of LPP2, as well as the corresponding policies of the Framework. The appeal proposal would also be contrary to the broad aims and objectives of policy CP13 of LPP1 and policies DM15, DM16 and DM17 of LPP2 insofar as they seek, amongst other requirements, to protect local distinctiveness and conserve and enhance open areas.

Character and appearance

18. The proposed ball stop netting on the boundary of the new housing with the existing playing fields was introduced following Sport England's consultation response. However, other than a notation on the proposed layout plans no further details of this netting have been provided. There is no indication of the height of the netting, or its design and I note that the Council contend that it could extend to a minimum height of 9 metres.
19. The Appellant has suggested that the detailed design of the new netting could be controlled by condition. I do not agree. As this is an application for full planning permission, I would have expected full details of the netting to have been provided so that its impact could be fully and properly assessed and interested parties given an opportunity to comment.
20. The Appellant considers that netting is unnecessary and points to the fact that the existing playing fields already adjoin residential development where no similar problems have arisen. Whilst that may be so, as I observed on site the boundary between the playing fields and residential development, principally the Greenacres scheme to the east, comprises mature trees and landscaping, which would be effective in preventing, for example, footballs from entering the site. In addition, most of the immediate area within Greenacres comprises car parking and an internal access road, with the majority of the individual properties set back and less likely, therefore, to be impacted on. In comparison, units 2 and 3 within the appeal scheme would be sited close to the new boundary with the playing field and even with the provision of boundary landscaping, which would take a considerable time to mature, the likelihood is that the threat from stray footballs would be far greater.
21. Within the above context and based on the assumption that the netting could extend to the height suggested by the Council, the proposed ball stop netting would, in my view, be visually prominent and would dominate views of this part of the site and streetscene. It would introduce a feature that would be out of character with the mature landscaped setting to the playing fields and would impact on its openness through creating a feeling of enclosure within this part of the open area, from where the amenity value and its importance to local distinctiveness largely derives.
22. As the proposed netting would be sited close to or on the new boundary with units 2 and 3, it would have a harmful impact on the outlook of future occupiers, dominating views from the windows and gardens to those properties. Any new boundary landscaping would not be sufficient to

mitigate the impact on both the living conditions of future occupiers and those of existing occupiers of the properties in Bereweke Way.

23. Accordingly, I find that the proposed ball stop netting would result in harm to the character and appearance of the appeal site and surrounding area and would be contrary to policies DM15, DM16 and DM17 of LPP2. These policies seek, amongst other requirements, to ensure that development responds positively to the character and appearance of the area and respects, conserves and enhances the qualities of the area that contribute towards local distinctiveness.

Other Matters

24. Interested parties have raised concerns in relation to the impact of the appeal proposal on highway safety, privacy, loss of on street parking, flood/drainage risk and the loss of mature hedges/trees. There is no detailed evidence before me to suggest that any of these concerns would result in material harm or in any conflict with the relevant policies of LPP1 and LPP2, and they are not issues that the Council have raised. In relation to highways and flood risk, the Highway Authority raised no objection to the layout subject to appropriate conditions and similarly it was agreed that any flooding/drainage issues could also be controlled by appropriate conditions. There is no evidence before me that would lead me to question those findings and I am satisfied, therefore, that none of these issues would give rise to any harm or any material conflict with either the policies of the Framework or the development plan.

Planning Balance

25. I accept that the appeal proposal would make a contribution to meeting future housing provision and generate short term employment during construction, benefits that are supported by other policies in the development plan and Framework, in particular paragraph 60 of the latter and the objective of significantly boosting the supply of homes. However, the economic and housing benefits would be modest, the proposal is for market housing and would thus not address any local affordable need and the Council indicate that they are able to demonstrate a 5-year supply of housing land, which has not been challenged. I have also found that any alleged community benefits would not be reasonable or effective and would not outweigh the significant harm caused by the loss of part of the protected open area.
26. In view of the above findings, I have attached only moderate weight to these benefits, and they are not sufficient either individually or cumulatively to outweigh the significant harm that I have identified and the direct conflict with the development plan, when read as a whole.

Conclusions

27. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR