



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: 08 June 2023

Appeal Ref: APP/L1765/W/22/3308759

Beriton, Heath Road, Soberton, Hampshire SO32 3QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs G Kattenhorn against the decision of Winchester City Council.
 - The application Ref 22/00528/OUT, dated 8 March 2022, was refused by notice dated 17 August 2022.
 - The development proposed is the erection of two infill dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two infill dwellings at Beriton, Heath Road, Soberton, Hampshire SO32 3QH in accordance with the terms of the application, Ref 22/00528/OUT, dated 8 March 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal scheme is for outline planning permission with all matters reserved for future approval. Therefore, whilst not formally part of the appeal scheme, I have treated any details submitted with the appeal application relating to access, appearance, landscaping, layout and scale (the reserved matters) as indicative.
3. The proposed development is located within the catchment of the Solent, including the Solent and Southampton Special Protection Area (SPA), Solent Maritime Special Area of Conservation (SAC), Portsmouth Harbour SPA, and Chichester and Langstone Harbours SPA and SAC. Although not a reason for refusal, 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.

Main Issues

4. The main issues are:
 - whether the location of the proposed development would be suitable, having regard to development plan policies concerning the location of development and subsequently the effect of the proposed development on the character and appearance of the area; and

- whether the proposed development would be likely to have a significant effect on the integrity of the Solent's designated SPAs and SACs.

Reasons

Location

5. The appeal site comprises part of the large garden area associated with the property known as Beriton and the adjacent annexe in the settlement of Soberton. As Soberton does not have a clearly defined settlement boundary Policy MTRA3 of the LPP1¹ applies which identifies it as a settlement which may be considered suitable for development. This policy also stipulates that the infilling of a small site within a continuously developed road frontage may be supported provided it is of a form compatible with the character of the village and does not involve the loss of important gaps between developed areas.
6. Although the term 'small site' is not defined within Policy MTRA3 or its supporting text, the appeal site is capable of accommodating a small development of two dwellings in a similar form and plot size to other properties along Heath Road. As recognised by the Council, the term 'continuously developed road frontage' is also not defined within Policy MTRA3. On the same side of Heath Road, existing properties are located from Yew Tree Cottage adjacent to the site extending to The Liberties, beyond which is located a recreation ground. Given the gaps between the built form associated with the properties within this stretch of the road and its varying relationship to the highway, there is not a continuous building line. Nevertheless, given the presence of front gardens, driveways, parking areas and boundary features commonly associated with a residential, rather than rural, environment, this side of the road has a developed character.
7. Along the site's frontage to Heath Road, the clumps of evergreen trees limit views to glimpses of the site's manicured garden and the large sheds beyond. Combined with the driveway entrance to Yew Tree Cottage immediately adjacent to the site boundary and the neatly cut hedgerow along its frontage, the continuously developed stretch of Heath Road also includes the appeal site and the cottage, regardless of the latter's relationship to the road. In contrast, opposite the site and on the other side of Yew Tree Cottage, more substantial, important gaps that permit views across the countryside are located. This arrangement is also reflective of the alternating presence of built form along Heath Road between its junction with Liberty Road and Chapel Road. I therefore, conclude that the proposed development would accord with Policy MTRA3 in respect of the characteristics of an infill site.
8. Policy MTRA3 also requires development to be compatible with the character of the settlement and conserve its identity, countryside setting, historic characteristics and local features, including those identified within Village Design Statements (VDS). My attention has been drawn to the identified glimpses in the Soberton and Newtown VDS that demonstrate a good outlook between buildings which deserve protection from infill. Whilst located close to the site, glimpse 13 comprises views across the field adjacent to Yew Tree Cottage from the junction between Heath Road and Liberty Road. It does not, therefore confer protection from infill to the appeal site.

¹ Winchester District Local Plan Part 1 – Joint Cores Strategy 2013 (the LPP1)

9. Additionally, Policy DM23 of LPP2² only permits development outside settlement boundaries where they do not have an unacceptable effect on the rural character of the area. As already identified, the appeal site is located within the continuously developed road frontage on Heath Road, given the residential character of the road boundary features and the views into garden areas and other built form beyond. As such, any visual relief from the built form between Beriton and Yew Tree Cottage does not alter this continuously developed character nor ease the transition into the countryside in this location.
10. This character contrasts strongly with the views towards open countryside through substantial gaps between development along both sides of Heath Road. The character of these gaps is also influenced by the boundary treatments in these locations such as post and wire fencing, irregularly spaced mature trees and unmanicured hedgerows. Therefore, I conclude that the development of the site to provide two dwellings would be compatible with the character of this part of the settlement. Consequently, the development of the appeal site would not result in the loss of an important gap and would conserve the character and appearance of the area.
11. In conclusion, the location of the proposed development would be suitable, having regard to development plan policies regarding the location of development and it would not cause harm to the character and appearance of the area. As a result, it would accord with Policy MTRA3 of the LPP1 and Policy DM23 of the LPP2 in these respects.
12. On the decision notice, the Council also refer to Policy MTRA4 of the LPP1. However, as this policy relates to development in the countryside, defined as land outside the built-up areas of the settlements identified in MTRA3, including Soberton, it is not determinative in my decision.

The integrity of the Solent

13. SPAs and SACs are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). The special interest of the Solent results from the various birds supported by the habitat, particularly during the winter months. The protection of the Solent 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 Solent 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 can result in a process known as eutrophication which speeds up the growth of certain plants, threatening the aquatic ecosystem by damaging the Solent's plants and wildlife.
14. As the proposed development comprises residential development, it would add to the number of people living within the area and increase the amount of wastewater being discharged into the Solent. It is therefore likely that the proposed development, taken both in isolation and cumulatively with other projects, would have a significant adverse effect on the integrity of the Solent. Consequently, it is necessary for me, as the competent authority, to conduct

² Winchester District Local Plan Part 2 – Development Management and Site Allocations 2017 (the LPP2)

an Appropriate Assessment concerning the effect of the development on the integrity of the Solent.

15. The appellant has submitted an executed Deed of Allocation of Nitrate Offsetting Scheme (the Deed) in conjunction with the owner and tenant of Whitewool Farm, Hampshire, dated 30 January 2023. Whitewool Farm benefits from planning permission³ and is subject to the provisions of a Section 106 agreement⁴ and Deed of Variation⁵ for habitat creation works within a Wetland Area to facilitate the removal of nitrates from the natural environment. The Deed includes obligations relating to the allocation of a portion of the Wetland Area to the appellant to mitigate the impact of the proposed development on nitrate levels in the Solent, using the agreed figure of 5mg/l within the nutrient budget for this application, in return for a commuted sum.
16. The amount of off-setting required to ensure that the proposed development is nitrate neutral is based upon a predicted water consumption rate and the proposed package treatment plant (PTP) meeting a certain standard. Whilst I have limited substantive information regarding any ongoing sewage problems in Health Road, foul water discharge from the proposed development would be managed by the PTP and monitored to ensure it meets the appropriate standard. This can be secured through an appropriately worded condition.
17. The Deed came into effect on the date of execution, before which the appellant was required to pay a reservation fee to the tenant. The agreed commuted sum is due to be paid by the appellant to the tenant eight weeks following the grant of planning permission for the proposed development. Having regard to all the evidence before me, the obligation is directly related to the development, fairly and reasonably related in scale and kind to the development and is necessary to make the development acceptable in planning terms. I am, therefore, satisfied that it meets the relevant statutory tests.
18. I conclude that, subject to the proposed mitigation, the development would not result in an adverse effect on the integrity of the Solent, in accordance with the Habitat Regulations. It would also accord with Policy CP16 of the LPP1 which seeks to protect sites of European importance from inappropriate development.

Other Matters

19. My attention has been drawn to representations made during the determination of the appeal application by Hampshire County Council (the Highway Authority) and South Down National Park Authority (SDNPA). The Highway Authority has recommended a holding objection on the proposed development until details relating to the access arrangements, including confirmation of visibility splays, have been provided. However, as access is a reserved matter, these details will be considered at a later date and there is nothing substantive before me to suggest these could not be delivered satisfactorily at the appeal site. The SDNPA has commented that further consideration should be given to the Dark Night Skies reserve and landscaping of the site to ensure minimum hard surfaced and native frontage planting is provided. Similarly, as these details

³ Planning permission ref SDNP/20/01263/FUL dated 17 February 2021

⁴ Between South Downs National Park Authority, William Northcroft Butler and James Nicholas Butler, and H N Butler Farms Limited executed on 16 February 2021

⁵ Between South Downs National Park Authority, William Northcroft Butler and James Nicholas Butler, and H N Butler Farms Limited executed on 29 April 2021

relate to matters reserved for a later date, they are not determinative in my decision.

20. Several representations have been made by interested parties regarding the range of facilities within walking distance of the appeal site and the fact that the proposed development does not comprise affordable social housing. However, as Soberton is identified in MTRA3 of the LPP1 as a settlement suitable for small-scale development I do not need to consider its capability to support the occupants of two new open market dwellings. Furthermore, given the scale of the proposed development, any increase in car use would not cause unacceptable environmental damage. Based on the evidence before me and my observations during my site visit, I have no reason to conclude that the proposed development would result in danger to pedestrians, cyclists and horse riders. Notwithstanding this, matters relating to the proposed access to the site will be determined at a later date, including highway safety.
21. Concerns regarding the condition of the surrounding road network, including the presence of potholes, are a matter for other authorities and therefore fall outside the remit of this decision. Whilst concerns have been raised regarding the filling of the open pond, no proposals for this are included within the proposed development. As the pond is located outside the appeal site boundary and landscaping is a reserved matter, any proposals incorporating the pond will be considered within subsequent planning applications. However, in the interest of protecting the biodiversity of the area, I can impose a condition requiring an appropriate mitigation and enhancement scheme to be prepared.
22. Similarly, despite the limited evidence before me demonstrating that existing ditches and watercourses in the area flood and are overwhelmed, suitable conditions can be imposed to secure appropriate surface water drainage measures for the proposed development. Irrespective of the lack of information before me regarding another planning application for a change of use of the site referred to by an interested party, I have determined the appeal taking into consideration the development plan as a whole. Furthermore, any similarities between the appeal scheme and a previous appeal on land adjacent to Woodside Cottage⁶ are limited given the planning regime at the time of the decision.

Conditions

23. I have considered the Council's suggested conditions in light of advice contained within the Framework and the National Planning Practice Guidance. I have undertaken some minor editing, rationalisation and reordering, in the interests of precision and clarity. Where appropriate, I have also removed the detailed lists of matters to be included from the conditions as they are not necessary to make the conditions precise or enforceable. Additionally, this approach enables the parties to agree on the most suitable method of compliance based on best practices at the time of discharging the conditions.
24. I have imposed standard conditions relating to the submission and timing of reserved matters applications and the commencement of development. To ensure nutrient neutrality, a condition is necessary to secure the land required to provide the required capacity of nitrates, along with another to install the PTP before the dwellings are occupied, in accordance with policies CP11, CP16

⁶ Appeal ref: APP/L1765/A/1178894

and CP21 of the LPP1. These policies require development to achieve low levels of water consumption, protects biodiversity and secure the necessary agreements for off-site mitigation measures.

25. I have imposed a condition requiring details of the surface water drainage works to be approved by the Council to avoid drainage problems, including pollution or flood risk. Given the use of the PTP, it is not necessary for this condition to include a foul water strategy.
26. To ensure that there is no harm to other biodiversity interests, a condition has been imposed to secure an appropriate mitigation and enhancement scheme. In the interests of living conditions of existing and future residents, and highways safety, I have imposed a condition requiring a Construction Environment Management Plan to be submitted to and approved by the Council.
27. A further condition regarding energy and water efficiency measures is also imposed to secure the required water consumption measures and high energy performance in accordance with Policy CP11 of the LPP1 which requires development to achieve low levels of carbon emissions and water consumption. This condition does not need to be submitted before the development commences.

Conclusion

28. For the reasons given above, and taking into account all relevant matters raised, I conclude that the appeal should be allowed.

Juliet Rogers

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development hereby permitted shall commence until the Notice of Allocation in accordance with the legal agreement between William Northcroft Butler and James Nicholas Butler, H N Butler Farms Limited and George David Kattenhorn and Beryl Nora Kattenhorn dated 30 January 2023 in respect of the Whitewool Farm identified in the legal

agreement to secure 0.8kg/TN/Yr has been submitted to and acknowledged in writing by the Local Planning Authority. The Notice of Allocation shall confirm that the off-site mitigation to offset the increase in nutrient discharge shall be fully secured for the lifetime of the development.

- 5) No development hereby permitted shall commence on site until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved CEMP (unless otherwise agreed in writing by the Local Planning Authority).
- 6) No development hereby permitted shall commence until a scheme for the protection of biodiversity interests on the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details and timings therein and shall thereafter be maintained as specified within the approved scheme.
- 7) No development hereby permitted shall commence until a detailed surface water drainage scheme including a timetable for its delivery and scheme for future maintenance for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter maintained in accordance with the approved details.
- 8) Prior to the occupation of the development, details of the Package Treatment Plant, generating total nitrates from the wastewater effluent at the site equivalent to or lower than 5 mg/l, including a long-term Drainage Monitoring and Maintenance Strategy, shall be submitted to and approved in writing by the Local Planning Authority. The Package Treatment Plant shall be installed, monitored and maintained in accordance with the approved details and timings therein.
- 9) Prior to the occupation of the dwelling to which they relate, details of energy and water efficiency measures shall be submitted to and approved in writing by the Local Planning Authority. The energy efficiency measures shall be designed to demonstrate that all homes meet the equivalent of Level 4 of the Code for Sustainable Homes. The water efficiency measures shall be designed to ensure potable water consumption does 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.

End of schedule