



Appeal Decision

Site visit made on 3 May 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/M1710/W/22/3300340

Land South of Manor Lodge Road, Manor Lodge Road, Rowlands Castle PO9 6BA

- 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 Laura Tilly of VIVID Housing Ltd and Rob Symons of Falcon Developments (SE) Ltd against the decision of East Hampshire District Council.
 - The application Ref 58024, dated 31 May 2021, was refused by notice dated 18 February 2022.
 - The development proposed is described on the application form as 'proposed affordable housing entry-level exception site, consisting of 14 shared ownership dwellings, new vehicular and pedestrian access, ecological and landscaping enhancements, car parking and associated works'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application that led to this appeal was refused by the Council on a number of grounds, including matters relating to nitrate neutrality. However, during the course of the appeal, the Council withdrew its objections in relation to this on the basis that the proposed development could be made acceptable through the use of planning obligations. Consequently, this matter does not form a main issue in the appeal.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the living conditions of the occupiers of The Former Rectory, with particular regard to privacy;
 - the effect of the proposed development on protected species; and
 - the effect of the proposed development on the gap between Rowlands Castle and Havant.

Reasons

Background and national policy context

4. The proposed development is for the provision of 14 entry-level housing units on an unallocated site. These would be 2 and 3-bedroom shared ownership dwellings, restricted to people with a local connection who are unable to afford housing accommodation on the open market.
5. Paragraph 72 of the National Planning Policy Framework (the Framework) supports the development of entry-level exception sites, suitable for first time buyers or those looking to rent their first home, on land not already allocated for housing. This is unless the need for such housing is already being met within the authority's area. Those sites should be adjacent to existing settlements, and be proportionate in size to them.
6. The proven need for entry-level affordable housing for local people relating to Rowlands Castle is not in dispute, albeit the Council sets out some other sites across the district where affordable housing is being delivered.

Character and appearance

7. The appeal site comprises a parcel of undeveloped land adjacent to Manor Lodge Road. The part wooded, part grassland nature of the site, together with the wider landscape, consisting of open grassland to the west and further wooded areas to the north, contributes to a verdant and semi-rural character.
8. Although pockets of established development exist to the east and south of the appeal site, this is sporadic in nature. The site is not allocated for housing development and does not fall within one of the Council's defined settlement policy boundaries. It therefore lies within the open countryside.
9. Policy CP14 of the East Hampshire District Local Plan: Joint Core Strategy (CS, 2014) sets out that residential development outside settlement policy boundaries will only be permitted subject to meeting certain criteria. This includes where the development provides affordable housing for local people where there is a proven need; that the need cannot be met within the settlement to which it relates; and that the settlement provides a range of local services and facilities, or access to such facilities.
10. As set out above, entry-level affordable housing is proposed. This would be restricted to local people, with evidence provided for the need relating specifically to Rowlands Castle. Rowlands Castle provides a range of local services and facilities located within a reasonable distance of the site, including a church, public houses, shops, a railway station and bus stops. It is also evident that there are very limited opportunities for development in the confines of Rowlands Castle. From that perspective, the proposed development would comply with the requirements of CS Policy CP14.
11. Notwithstanding the above, CS Policies CP20 and CP29 seek to conserve and enhance the special characteristics of the natural environment, ensure that the layout and design of development contributes to local distinctiveness and sense of place, and is appropriate and sympathetic to its context.
12. The established development of the immediately surrounding area, is one in which properties generally sit within large, well-landscaped garden plots,

arranged traditionally towards roads. The proposed development would be at odds with this, introducing built form where there is currently none and forming a cul-de-sac set away from Manor Lodge Road and its established building lines. The development, when taken as a whole, would be more urban in character to those surrounding developments and would encroach into the open countryside. Accordingly, the development would be discordant and out of keeping with the established pattern and rhythm of development in this part of Rowlands Castle.

13. I acknowledge that the access to the scheme has been designed so as to protect much of the wooded frontage along Manor Lodge Road, as well as to minimise the loss of high amenity trees here. However, a reasonable area would be cleared in order to provide vehicular access to the site. The very presence of a new vehicular access here, together with the inevitable associated street furniture, would have an urbanising effect on this frontage. Moreover, views of the wider development would be obtained from the site entrance, through gaps in landscaping from the footpath to the west of the site, and from neighbouring private vantage points.
14. Overall, I conclude that the siting and layout of the proposed development would have a harmful urbanising effect on the character and appearance of the currently undeveloped and largely open appeal site, and the surrounding landscape. The proposed development would conflict with the relevant provisions of CS Policies CP20 and CP29, which in summary seek to conserve and enhance the special characteristics of the natural environment and ensure that the layout and design of development contributes to local distinctiveness and sense of place.

Living conditions

15. At present, the occupants of The Former Rectory benefit from reasonable levels of privacy within their rear garden. This is due to the undeveloped nature of the appeal site and the intervening boundary treatments separating The Former Rectory and the footpath to the west.
16. The proposed development would introduce built form to the site which would feature several first floor windows within the rear elevations of Plots 1-4. I note that these properties would be set back somewhat from the boundary, that the scheme has been amended to reduce the number of rear-facing windows proposed, and that additional soft landscaping has been introduced. Nevertheless, the rear-facing bedroom windows would look out over the rear garden of The Former Rectory at close range and from an elevated position. Landscaping features would need to be of a considerable height and density to prevent harm caused by overlooking and would likely take some years to mature. In any case, planting and boundary features cannot be relied on in perpetuity to provide a satisfactory level of protection. Consequently, the level of privacy currently experienced in the rear garden of The Former Rectory would be diminished, harming the living conditions of those neighbouring occupants.
17. I accept that there is no specified design guidance before me with respect to separation distances. I also acknowledge the appellant's comment that, in some cases, a 21-metre separation distance has been used as a 'rule of thumb'. However, irrespective of this, I have assessed the appeal scheme on the basis of the plans before me and the site's individual circumstances. I do

not accept that the relatively large scale of the garden at The Former Rectory should mean that overlooking becomes appropriate in some parts of it.

18. From my observations on site, I am of the view that there would be no significant harm to the habitable rooms of the main dwelling at The Former Rectory. Nevertheless, this does not lessen or overcome the harm identified in respect of the garden.
19. Overall, I conclude that the proposed development would have a harmful effect on the living conditions of the occupiers of The Former Rectory, contrary to the relevant provision of CS Policies CP27 and CP29, which in summary seek to protect the living conditions of neighbouring occupiers. This is in a similar vein to the objectives of the Framework insofar as living conditions are concerned.

Protected species

20. CS Policy CP21 seeks to ensure that development proposals maintain, enhance and protect the district's biodiversity and surrounding environment, including the protection of and, where appropriate, strengthening of populations of protected species. Paragraph 174(d) of the Framework states that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.
21. Based on surveys undertaken, the Council raises concerns around the potential of the proposed development to harm bats, and in particular a population of Bechstein's bat. Those concerns largely relate to the proposed loss of the grassland area on the site, which is closely associated with adjacent areas of woodland, both on and off the site, and is likely to be used by bats for foraging and commuting.
22. The appellant sets out that there is no clear evidence that Bechstein Bats would be harmed by the proposed development, that the site is not designated, and that any loss of habitat would be overcompensated by the enhancement of the woodland and new planting. I accept that the site is not designated in ecology terms, that matters in respect of light pollution could be controlled by condition and that the appellant has offered to monitor the site throughout the construction and operation phases. Nevertheless, there is no clear or substantive evidence before me to demonstrate that the management and enhancement of the remaining site would avoid harm to existing bat populations. Without greater certainty, it is not possible to satisfactorily demonstrate that the proposed development would have an acceptable effect on the protected species or that it could meet the requirements of CS policies in this respect.
23. Consequently, I conclude that there is insufficient evidence before me to demonstrate that the proposal would have an acceptable effect on protected species, in particular bats. This is contrary to the relevant provisions of CS Policy CP21 which, in summary, seeks to ensure that development proposals avoid negative impacts on biodiversity and protected species. This is in a similar vein to the objectives of paragraph 174(d) of the Framework.

Gap between settlements

24. CS Policy CP23 seeks to protect the open and undeveloped nature of gaps between settlements to help prevent coalescence and retain separate identity. This includes the gap between Rowlands Castle and Havant. An exemption

applies under CS Policy CP23 if a development would not undermine the physical or visual separation of settlements, would not compromise the integrity of the gap or the development cannot be located elsewhere.

25. The precise extent of the protected gap is not defined under Policy CP23 or any other policy document before me. I acknowledge that the appeal site lies on a key route between Rowlands Castle and Havant. Nevertheless, built form exists to the south of the appeal site, between the settlements, including properties forming The Former Rectory, Oakwood and Bramble Court, and beyond the roundabout along Durrants Road. On the opposite side of the road are further established properties, including St John the Baptist Church. Whilst I acknowledge that the site forms a small gap between established, sporadic development within Rowlands Castle, it could not reasonably be described as forming an obvious gap between the settlements of Rowlands Castle and Havant.
26. Overall, I conclude that the proposed development would not harm the gap between settlements, in accordance with the relevant provisions of CS Policy CP23, which in summary seeks to prevent coalescence of settlements.

Other Matters

27. My attention is drawn to several other schemes, including Land South of Broad Town Primary School and Keyline Builders Merchants, Redhill Road. Whilst I have limited information before me in respect of those cases, it is evident that they involved schemes of different scales, which were assessed under different circumstances. The Keyline Builders Merchants scheme involved the provision of 43 dwellings on a previously developed site where the effect of the development on character and appearance did not form a main issue. Whilst the Broad Town scheme, which was also subject to a High Court Challenge, involved consideration of the effect on landscape, the circumstances and balance in that scheme were different to the appeal before me. Other developments that have been drawn to my attention are not positioned in the same part of Rowlands Castle. Accordingly, it is evident that the circumstances that applied to these other cases, and the planning balance there, are not directly comparable to those before me.
28. Statute places a duty on me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Sir George Staunton Conservation Area and the desirability of preserving nearby Grade II listed buildings, including that of Autumn House. There is no dispute between the Council and appellant in respect of any harm to the character or appearance of the CA or nearby listed buildings as a result of the proposed development. Based on the evidence before me, and my observations on site, I have no reason to disagree with the Council's findings. The site is perceived as a discrete entity, separate and functionally and visually removed from Autumn House and the CA. The proposed development would have a neutral effect on these heritage assets, thereby preserving them.
29. The appellant has submitted a signed and dated Section 106 Agreement to secure an affordable housing offer, including the delivery and transfer of units, and a series of other planning obligations. The obligations in respect of affordable housing are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related to the scale and kind of the development. However, given

my reasoning in respect of the main issues and that the appeal is dismissed, there is no requirement upon me to consider whether the remainder of the obligations before me are compliant with the CIL Regulations 2010 (as amended).

30. As set out above, the Council has withdrawn its objections in relation to nitrate neutrality. Whilst I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended), given my reasoning in respect of the main issues and that the appeal is dismissed, there is no requirement upon me to consider such matters any further. Even were I to find the proposal acceptable in this respect, it would be neutral in my determination of the case.
31. The submitted evidence indicates that the Council cannot currently demonstrate a five-year housing land supply. The appellant is of the opinion that this stands at around 3.96 years, whereas the Council figure is 4.78 years based on the evidence within the East Hampshire Five-Year Housing Land Supply Position Statement – September 2022. Whichever figure I accept, this means that the policies which are most important for determining the proposal are out of date. This is a matter I address subsequently.

Planning Balance and Conclusion

32. Based on the evidence before me in respect of the lack of a five-year housing land supply, and noting the Government's objective of significantly boosting the supply of homes, the provisions of Framework paragraph 11.d fall to be considered.
33. The proposed development would generate a number of benefits. These benefits include the provision of on-site affordable housing, for which there is demand and housing officer support, and a contribution of 14 units to the district's housing supply. However, given the scale of the scheme and the reasonably modest shortfall of housing land supply in the district based on the evidenced¹ 4.78 years, I consider those benefits to be of moderate weight.
34. There would be clear economic benefits through temporary employment during the construction of the scheme and an increase in trade for local businesses and services once the proposed units were occupied. This is of moderate weight. The scheme would also provide some highway improvements and ecological enhancements. Whilst these are clear benefits, they are not, in my view, inherently dependant on the wider redevelopment of the site or the particular scheme before me. I give these benefits moderate weight.
35. I have found that the scheme would not adversely affect highway safety or trees, and would meet other planning objectives such as internal space standards and parking standards. I have also found the setting of nearby heritage assets would be preserved. However, these are requisites for development to be acceptable and so are neutral in the balance, attracting no weight.
36. Conversely, the proposed development would result in significant adverse impacts on the character and appearance of the area and on the living conditions of the occupiers of neighbouring properties. There is also the potential for adverse impacts on biodiversity in the absence of sufficient

¹ East Hampshire Five-Year Housing Land Supply Position Statement – September 2022

evidence to the contrary. Accordingly, the adverse effects of granting permission would significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies of the development plan as a whole.

37. For the reasons given above, having taken account of all other material considerations, I conclude that the appeal should be dismissed.

A Price

INSPECTOR