



Appeal Decision

Site visit made on 9 March 2023

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2023

Appeal Ref: APP/P2114/C/21/3286215

Land at Kingsmead, Winford Farm, Watery Lane, Newchurch, Isle of Wight PO36 0LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mark King against an enforcement notice issued by Isle of Wight Council.
 - The notice was issued on 24 September 2021.
 - The breach of planning control as alleged in the notice is the construction of a dwelling house together with garage.
 - The requirements of the notice are:
 - (i) To cease the use of the building in the approximate position shaded blue on the attached Plan A as a dwellinghouse; and
 - (ii) Demolish the unauthorised dwellinghouse and garage in the approximate position shaded blue on the attached Plan A to ground level and remove all resultant material from the Land.
 - The periods for compliance with these requirements are 6 and 8 months respectively.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a dwellinghouse at Land at Kingsmead, Winford Farm, Watery Lane, Newchurch, Isle of Wight PO36 0LX as shown on the plan attached to the notice and subject to the following conditions:
 - (1) The dwellinghouse hereby permitted shall only be occupied by a person or persons providing care to the current occupiers during their lifetime (Mr Mark King and Mrs Pauline King) of the existing dwellinghouse currently known as Kingsmead, the spouse/partner of such a person, and their dependent children.
 - (2) The dwellinghouse and garage building hereby permitted shall not be sold off from the existing dwellinghouse, currently known as Kingsmead, until the death of Mr Mark King and Mrs Pauline King.
 - (3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no development within Classes A (where Class A development would

enlarge the original dwellinghouse), B, C and E of Part 1, or Class A of Part 2, of Schedule 2 to that Order shall be carried out.

Reasons

Ground (d)

2. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
3. The notice was issued and served on 24 September 2021. The time limits for enforcement action are set out in section 171B of the 1990 Act. In respect of operational development, section 171B (1) sets out that no enforcement action may be taken after the end of the period of four (4) years beginning with the date on which the operations were substantially completed. That means that the works the subject of the notice must have been substantially completed by 23 September 2017.
4. The appellant in effect argues that the works were substantially complete by that date, albeit no evidence is offered up to establish that was the case. The Council has submitted contrary evidence. A photograph taken at the site inspection by the Council's investigating officer on 29 November 2017¹ shows work still taking place from scaffolding surrounding the building, whose roof has not been fully tiled and whose walls have not been rendered. This photo clearly shows that the building was not substantially complete at that time, less than 4 years before the service of the notice.
5. The appellant claims that the building was erected pursuant to permission ref P/00258/17 – the revised scheme granted on 6 April 2017 for the retention and completion of a garage and machinery store including pool house and completed as such, and then converted to its current part residential use. The above photo clearly shows that wasn't the case because the roof of the building is higher than the roof permitted by that permission and contains the dormer windows that has facilitated the creation of the building's first floor bedrooms, which define its unauthorised residential use; the building under construction at that date was not the building that was granted permission, rather it was initially built to encompass the residential use. In any case, as set out above, the building was not substantially complete 4 years before the service of the notice.
6. For these reasons the appeal on ground (d) must fail.

Ground (a)

7. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
8. The site lies well outside any settlement boundary and is therefore in conflict with Policy SP1 (Spatial Strategy) of the Island Plan (the Isle of Wight Core Strategy, adopted in March 2012). However, it is situated in a group of buildings at the Winford Road, Watery Lane and Forest Road crossroads adjacent to the western edge of Winford, a settlement comprising

¹ Appendix O to the LPA Statement of Case

predominantly suburban-style residential streets. While Winford is not a Rural Service Centre, it is very close to Sandown and to a range of facilities including the nearby Premier grocery store and Post Office at Apse Heath. The unauthorised new dwelling is certainly not an isolated home in the countryside in terms of National Planning Policy Framework (NPPF) paragraph 80.

9. Approximately 1km to the north up Winford Road is the village of Newchurch and 2km to the east, beyond Winford, is Sandown with all its shops and facilities. There are, as well documented by the appellant, a range of nearby existing and developing employment sites and facilities, including two garden centres and the Fighting Cocks pub, in the immediate local area. There is also a newly completed housing development immediately to the south comprising 42 affordable dwellings, allotments and new business units, which is visible from the appeal site. Also visible from there and just to the west on the main road, the A3056, is the newly completed Goddards Brewery. These two developments were granted planning permission in 2021 and 2020 respectfully.
10. That site – the former Branstone Farm Studies Centre – was previously owned by the Council, which decided that the location of these developments was sustainable and acceptable, despite also lying outside any defined settlement boundary in the wider rural area. Consequently, I cannot see in principle why the development proposed in this appeal is unacceptable and unsustainable when those developments were subject to the same planning policies in the Island Plan, notwithstanding that the Branstone Farm residential permission was a rural exception site solely for affordable housing.
11. Immediately outside the appeal site on Watery Lane are two bus stops served by the Vectis No 8 bus route, which runs between Newport and Ryde (via Sandown), which is an hourly service seven days a week (half-hourly in the summer months). Watery Lane itself is part of the 'Round the Isle of Wight' coastal leisure cycle route, which connects to National Cycle Route 23 less than 2km away north of Newchurch, which links Sandown, Newport and Cowes. As such, the site is fairly well served by modes of transport other than the private car, despite its location in the wider rural area.
12. The Council claims that the building is prominent in views from Watery Lane, in part due to the dormers within its roof and the large glazed covered balcony to its west elevation, which allegedly make it appear over-dominant and at odds with the countryside nature of the land around it including that to the south. The LPA argues that it therefore fails to integrate with its surroundings contrary to Island Plan Policy DM2 (Design Quality for New Development).
13. I disagree. While there are glimpses of the building from Watery Lane, the land is largely flat and it is not prominent from there because the new dwelling is partly shielded by hedges and Kingsmead, the appellant and his wife's smaller bungalow situated adjacent to the highway on the northern part of the site. Nor is the new building particularly large or high compared to the commercial buildings housing Unique Windows on the corner of the road junction or Winford House. It is 1.1m higher than the garage and machinery store building of the same footprint approved by the Council under P/00258/17 and has the two dormer windows and glazed covered balcony, but none of the alterations to its design, either alone or in combination, make it appear over-dominant within its immediate or wider context. It is no more dominant than the majority of the existing buildings, including the new houses at Branstone Farm to the south,

and certainly the Goddards Brewery building, which is far more prominent. For these reasons it would not in my view conflict with Policy DM2.

14. Another reason for the Council serving the notice was that the appellant had failed to demonstrate that this new dwelling would not lead to harmful effects on the Southampton and Solent Waters Special Protection Area (SPA) as a result of nitrate enrichment due to increased sewage output. However, as the Council's *Position Statement: Nitrogen neutral housing development* (November 2021) states, one of the options that can be used to demonstrate that this will not occur is to establish that any sewage waste is subject to treatment at Sandown Wastewater Treatment Plant (WwTP), because discharge from that plant is routed to the English Channel rather than the Solent or Southampton Water. The appellant has confirmed this via Appendix 4 of its Statement, an email in June 2021 from Southern Water confirming that this is indeed the case for this property. The development therefore complies with Policy DM12 (Landscape, Seascape, Biodiversity etc).
15. The final reason for issuing the notice was the lack of a financial contribution towards the provision of affordable housing, as required by the Council's *Affordable Housing Contributions* SPD. This has been rectified during the appeal by the submission of a (revised) S106 unilateral undertaking dated 4 February 2022, which commits Mr & Mrs King to pay the agreed affordable housing contribution within 28 working days of the grant of planning permission for the development. This contribution would ensure compliance with Policy DM4.
16. The Council acknowledges that it cannot demonstrate a 5-year housing land supply (5YHLS) and so the Island Plan's spatial strategy in Policy SP1 is out-of-date. Whilst that does not mean I give it no weight, I must perforce apply the tilted balance in NPPF paragraph 11 d), in other words grant permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
17. The Island Plan's spatial strategy should not be lightly set aside just because the Council cannot demonstrate a 5YHLS as that could lead to a spate of new dwellings in the open countryside. But as well as the above considerations, which weigh in favour of the development given that Policy SP1 is out-of-date, there are also the specific personal circumstances of the appellant and his wider family.
18. Mr King is disabled and requires permanent personal (and medical) care. I am satisfied that his primary carer is his daughter, Lisa King, who lives in the unauthorised dwelling with her husband Samuel Woodward, who between them have six children between the ages of 3 and 27, most if not all also live in the appeal dwelling. Mr Woodward manages the wider site in the appellant's ownership including the farming and commercial fishery/nursery activities in the lake to the immediate west of the appeal site and will manage the 7 fishing holiday chalets adjacent to the lake, the subject of the 2021 planning permission ref 21/00260 now under construction. Although no case is advanced by the appellant that Mr Woodward must live on site to manage these activities on the wider landholding, the fact that he does so is clearly beneficial to this rural business.
19. Much more importantly is his wife's role in providing care to her father, the appellant. Again, although it is not imperative for Mr King's primary carer to live on the site, it would be necessary for Lisa King to live nearby if she was to

provide care on a 24-hour, 7-day a week basis. The fact that she lives right next door to Kingsmead is therefore a clear benefit in allowing for Mr King's effective care, which would be more difficult if this was not the case.

20. Whether or not the development's lack of conflict with Policies DM2 or DM12 would tip the balance towards approving it given that Policy SP1 is out-of-date is a moot point. That is because those issues, combined with the personal 24/7 care needs of the appellant that are readily facilitated by his daughter Lisa living in the appeal building, are together sufficient to result in me deciding to allow this appeal.

Conditions

21. The Council has suggested five conditions be attached in the event of the appeal being allowed. Its first condition requires details of foul and surface water drainage. This condition is unnecessary because I saw on site how the dwelling is connected to the combined sewer already, and it has been confirmed that the wastewater is treated at Sandown WwTP as set out above. There is no reason for supposing that it would never not be in the future.
22. The second proposed condition requires the submission of a scheme to show a parking area for two cars and sufficient turning space to allow cars to exit the site in forward gear. There is already ample hard space on the site which allows for this as I saw at my site visit and so there is no need for such a condition.
23. The third condition requires the dwelling to only be occupied by a person or persons providing care to the occupiers of Kingsmead. I understand and agree that there is a need to tie permission for the dwelling to the care needs of Mr King (and Mrs King if she becomes ill and needs care from her daughter), because otherwise it is possible that this house would be sold off and another unauthorised dwelling built for Lisa King to occupy as a carer, as this dwelling was. However, and as set out in my Condition 1 above, to require this 5-bedroom dwelling to only accommodate the carers for those living in Kingsmead in perpetuity is not warranted, given that it adds a needed new dwelling to the Island's housing stock and creates no planning harm apart from the conflict with out-of-date Policy SP1.
24. The same reasoning applies to the Council's suggested condition 2; that is why my Condition 2 above states that the new dwellinghouse and garage building shall not be sold off from Kingsmead until the death of both Mr & Mrs King.
25. My third Condition above mirrors the Council's suggested fifth condition. It restricts relevant permitted development rights for the dwelling, in other words those PD rights which would or could potentially cause planning harm to the character of the area. Consequently, such a condition meets the relevant statutory and policy tests.

Conclusion

26. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Nick Fagan, INSPECTOR