



Appeal Decision

Site visit made on 12 June 2023

by Hollie Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal Ref: APP/C1760/W/20/3259913

Silverdene, 25 Walworth Road, Picket Piece SP11 6LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by CR Acquisitions Ltd against the decision of Test Valley Borough Council.
 - The application Ref 19/03060/OUTN, dated 19 December 2019, was refused by notice dated 26 May 2020.
 - The development proposed is outline application for the development of up to 21 residential properties with associated parking, landscaping and access, and alterations to the existing dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The scheme was made in outline form with all matters save for access reserved. Consequently, I have treated the plans depicting the layout and appearance of the dwellings as largely indicative.
3. The Council confirmed that details submitted with the appeal were sufficient to address the reasons for refusal relating to the safety of the users of the highway from works at the site access. Consequently, this has not formed a main issue in the appeal.
4. A unilateral undertaking (UU) made as a deed under Section 106 of the Act was submitted on the 14 June 2023 providing for nine affordable dwellings and financial contributions towards the village hall, open space and nitrate neutrality. I address this matter below.

Main Issues

5. The main issues are:
 - the effects of the proposal on the character and appearance of the area;
 - the safety and usability of the internal road layout;
 - the effects of the proposal on the site's biodiversity value;
 - the effects on the Solent Protected Sites;
 - whether the proposal could adequately manage surface water run off;
 - the effects on the living conditions of neighbouring occupiers, with particular regard to privacy;

- whether adequate living conditions could be created for future occupiers, with particular regard to privacy, noise and odour;
- whether adequate contributions would be made towards public open space and community infrastructure; and
- whether the proposal would adequately respond to local housing needs, in terms of the provision of affordable housing.

Reasons

Character and appearance

6. The existing character of Walworth Road is varied with a range of house types of largely C20 age. However, the frontage development in the vicinity of the site is generally bungalows set in spacious plots. The appeal site is no exception, with the host dwelling, Silverdene, being a bungalow set back from the road within a spacious plot which also has an extra area of land extending to the rear behind three neighbouring dwellings. It is located towards the western edge of the settlement of Picket Piece.
7. The site is relatively flat, largely enclosed by trees and hedges with some areas of fencing and has a few trees in the central area. To the south and east of the site is the higher density, recent development of Locksbridge Park which includes some 3 storey buildings backing onto the site. Due to the site's siting and configuration, any development proposed would largely be of a backland nature, accessed alongside Silverdene and tucked in to land to its rear and extending into the 'L shape'. The proposal is for up to 21 dwellings and that is how many are shown on an indicative layout plan, with one dwelling alongside Silverdene, a block of 4 perpendicular to them to the rear and two linear arrangements in the rearward part of the site.
8. Given the manner in which Locksbridge Park has been developed extending in behind the dwellings fronting Walworth Road, a backland form of development would not be entirely out of character with the area. The Council's evidence suggests that any scheme should serve more of a role as a gentler transition between rural settlement edge, low density established development to the inner-urban, higher density more recent development.
9. As the only matter detailed at this outline stage is the site access, the layout plan is purely indicative. It appears physically possible to achieve up to 21 dwellings on the site, but such an outcome would appear relatively cramped in the context of the generally low lying, spaciouly set housing along Walworth Road. However, the outline nature of the application does not require me to determine the acceptability of the layout, and thus, this matter is not determinative.

Road layout

10. The indicative plan shows the fixed point of access to the east of Silverdene extending back into the site. The Council has confirmed that information received is sufficient to show that the site access can be made safe and therefore, this particular point of access and initial section of internal road appears to be relatively fixed.
11. However, beyond that point the internal access road layout and geometry would be determined by the number and position of the dwellings proposed. As

I am not in a position to determine the suitability of the layout at this outline stage, the internal road layout cannot be assessed in detail for its safety or useability. This matter is therefore not determinative.

Biodiversity

12. Though it is stated that the application and appeal were submitted with an Ecological Report and Biodiversity Mitigation and Environment Plan, this was not the case. A Biodiversity Checklist was submitted which generally indicates that the site is not close to designated sites and is lacking in features that support most protected species. It does however indicate that the site supports long tussocky semi-improved grassland with a hedgerow border. As these features have the potential to support reptiles, further surveys will be required along with a mitigation plan. The evidence also pointed to the need for further survey work should the hedgerow be removed.
13. Though the application is outline in form, it is clear that the site has some potential to support protected species and has some features of biodiversity value which may need protection. It is not possible to condition the requirement for surveys, particularly as some need to be undertaken within certain periods of the year. In the absence of a baseline assessment, it is not possible to understand what harms might arise, or how they might be mitigated.
14. Therefore, in the absence of information to the contrary, the proposal would harm the site's biodiversity value, contrary to Policy E5 of the Test Valley Borough Revised Local Plan (2016) (Local Plan) which seeks to ensure that development conserves, and where possible restores and/or enhances biodiversity.

Solent Protected Sites

15. The site lies within a catchment area that passes into the Solent. The Solent hosts many protected sites¹, designated under the Habitats Regulations² for their specific qualifying features, including aquatic plants, the water environment and the multiple overwintering bird species.
16. In short, levels of nitrogen and phosphorus from various sources are reaching the protected sites with negative consequences, harmful to their integrity. As a result, the nutrient input from changes in use of land, increases in foul drainage outflows and other related developments that drain into the protected sites must be assessed and found not to add to the existing nutrient burdens.
17. As the proposal would increase the number of residents, and thus, the foul water outflow passing to the Solent, it would be likely that the proposal would generate a significant adverse effect on the integrity of the protected sites. This point is not disputed by the Appellant and a form of mitigation has been detailed in the submitted UU. The UU defines the 'nitrate neutrality contribution' as any level of contribution required by the Council's adopted policy when that said policy is devised and adopted. The trigger for payment of the UU is prior to commencement of the development.

¹ The Solent and Southampton Water Special Protection Area/Ramsar and Solent Maritime Special Area of Conservation

² The Conservation of Habitats and Species Regulations, 2017, as amended

18. There are numerous problems with this approach, insofar as there is a lack of detail about the level of mitigation that would be needed, or when any offsetting credit system would be available for the Appellant to purchase to achieve nutrient neutrality, or how any issues would be addressed in relation to the same. Therefore, at this point in time, I do not have the sufficient certainty necessary to complete an Appropriate Assessment. Allowing the appeal without this requisite certainty would be in contravention with the requirements of the Habitats Regulations.
19. Therefore, in the absence of sufficient evidence to the contrary, the scheme would harm the integrity of the Solent Protected Sites, contrary to the requirements of the Habitats Regulations and Local Plan Policies E5 and E8. These Policies seek to avoid developments polluting the environment and more specifically, avoid significant effects on designated sites unless they satisfy the requirements of the Habitat Regulations.

Surface Water Run Off

20. Policy E7 of the Local Plan sets out that development will not be permitted unless it complies with national policy and guidance in relation to flood risk. The pre-ambles to the Policy sets out that Sustainable Drainage Systems (SuDS) can have a role in the management of rainfall and surface water, as well as helping to improve water quality. In line with national guidance, major development will need to ensure SuDS are provided to manage runoff unless exceptional circumstances apply. The National Planning Policy Framework (the Framework) sets out that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.
21. For a scheme of up to 21 dwellings, it is a major development. No details of even a high level sustainable drainage scheme were submitted, nor was any infiltration testing undertaken to understand the site's permeability. Whilst a detailed surface water scheme would be a requirement of a condition, a basic level of understanding of the site's capacity to accommodate SUDs relative to an indicative number of dwellings is required for major schemes.
22. Therefore, in the absence of evidence to the contrary, the proposal would not adequately manage surface water run off, contrary to Local Plan Policy E5.

Living conditions for neighbouring occupiers

23. The Council has raised issue with the insufficient distances between some of the proposed dwellings and existing neighbouring dwellings at No 40 Adams Road and 'Pin High' in terms of the effects on privacy for occupiers thereof. However, as the layout and appearance of dwellings are not fixed entities at this outline stage, the effects cannot be accurately determined. As a result, this matter is not determinative.

Living conditions of future occupiers

24. The living environment that would be created for future occupiers in terms of privacy would be dictated by the layout, which is an unknown quantity at this stage.
25. The submitted evidence indicates that land to the west of the site will be developed to provide an extension to Walworth Business Park which will

contain commercial/industrial uses³. Potential noise and odour emissions from these units could be harmful to future occupiers of dwellings built in close proximity of the same.

26. No details are available on how the industrial units will be laid out on site. The Council indicate that the layout of dwellings in Locksbridge Park has been tailored to provide a buffer between the closest dwellings and the industrial site, utilising a landscape belt and the access road, avoiding any rear gardens backing onto the potential noise sources. The submitted indicative layout plans show that the rear gardens for proposed units Nos 16 – 21 would be positioned along the boundary with the industrial site. As indicated, given the outline nature of the application, this layout is indicative.
27. The Appellant has submitted details of the planning conditions that limit the development of the industrial estate in respect of both noise and odour. As the units have not been developed yet, the respective conditions require noise assessments and odour management plans for any phase of development and indicate that account will be taken of any existing dwelling or dwelling with planning permission.
28. I note that the indicative plan shows dwellings far closer to the industrial site than the existing dwellings in Locksbridge Park and without the benefit of a landscape buffer and estate road. However, the layout of the appeal scheme is indicative. Were the layout fixed and shown to represent a greater constraint to development of the industrial estate, i.e., by deviating from the principles established on the adjacent site with sufficient buffering, then it would be reasonable to request further information about the noise exposure levels and living environment that future occupiers could expect.
29. I conclude on this issue as follows. The introduction of new dwellings onto the site would not necessarily introduce an 'agent of change' that would limit business activities; the uses are not inherently incompatible, and the conditions provide for sufficient protections. However, the layout and number of dwellings are unknown, and details of their appearance or details of boundary treatments are also lacking. Therefore, the matter is not determinative.

Public open space and community infrastructure

30. Under Local Plan Policy COM6, development in the area of Picket Piece is required to provide towards community facilities, including public open space. Similarly, Local Plan Policy LHW1 requires the provision of public open space within new developments, or a financial contribution in lieu of the same.
31. The submitted UU is based on the number of additional people that would be generated by the development as detailed in the Council's Officer Report, i.e. 44 additional people. However, this presupposes that the layout is fixed and that 21 dwellings would be delivered by the scheme. Furthermore, despite the financial contribution being of the specific amount expected from a development of 21 dwellings without flexibility for it to change, it does not detail the typologies of public open space or projects to which the contribution should be directed. The terms of the UU would therefore essentially 'fix' the scale of the development but would not satisfactorily do so in terms of how the

³ Under permission reference 16/01344/OUTN dated 29 September 2017

contribution should be spent in accordance with the Community Infrastructure Levy Regulations, 2010 (as amended).

32. In addition to Local Plan Policy COM6, Policy ESN 30 of the Infrastructure and Developer Contributions Supplementary Planning Document (2009) (SPD) relates to sports, community and cultural facilities and requires that developments make appropriate provision for infrastructure and community facilities. Table 4 in the explanatory text sets out the way in which contributions should be calculated. The UU provides for a contribution of £5,000 towards Picket Piece Village Hall but it is unclear how this contribution has been calculated or if this is the sole community or cultural facility to which contributions should be directed.
33. For the above reasons, the proposal fails to make adequate contributions towards public open space and community infrastructure and therefore conflicts with, in particular, Local Plan Policies COM6, COM15 and LHW1. Together, these Policies seek to ensure that appropriate investment has been secured either in the form of works and/or financial contributions to mitigate the impact of development on existing infrastructure. For similar reasons, the proposal would also fail to accord with the requirements of the SPD.

Housing mix

34. In respect of affordable housing, Local Plan Policy COM6 requires that development within the Picket Piece allocation area provides affordable housing provision in accordance with Policy COM7. Policy COM7 requires that developments on sites of 0.5 hectares or more, or for 15 dwellings or more, provide for up to 40% of dwellings to be affordable. Sites of more than 0.3 hectares are required to provide up to 30% and sites of 0.2 hectares or more are required to provide up to around 20% affordable housing. The evidence details the site area as being 0.53 hectares and thus, 40% would appear to be the relevant requirement.
35. The submitted UU defines the affordable housing as the nine dwellings of 6 no 2 bed affordable rent properties and 3 no 2 bed shared ownership properties. Whereas for other aspects, the outline nature of the scheme is put forward as justification for some matters having not been considered in full, in the case of the UU, it appears that the total number of dwellings would be fixed at 21 in total so as to determine the proportion of affordable housing to a total of nine dwellings. If there were any flexibility in the overall composition of the scheme, the affordable housing component could be expressed as a percentage of the total in the UU.
36. The Council has also highlighted the absence of definition and detail in the UU in connection with affordable housing standards, eligibility, the register of eligible applicants and the nature of the affordable housing products being offered, i.e. shared ownership and affordable rent. Similarly, doubt is cast on the suitability of the products offered in the context of the preference that would typically be sought from such a scheme.
37. For the reasons outlined and in the absence of evidence to the contrary, the scheme would fail to respond to the local housing mix in respect of the provision of affordable housing, contrary to, in particular, Policies COM6 and COM7 of the Local Plan.

Other Matters

38. The Appellant indicates that the delivery of housing in the Plan area may fall short were the standard method⁴ used to calculate housing requirements. It is suggested that the consequence of this would be to require the Council to think more positively about how it secures increased delivery against its previous minimum target levels. However, this does not suggest that the Council is incapable of demonstrating a five year supply of housing land at the present time or that the presumption in favour of sustainable development set out in paragraph 11 d) of the Framework is engaged as a result.

Planning balance and conclusion

39. Though a number of issues have not been found to be determinative, harm has been identified in respect of a number of areas that would not be possible to address by way of planning conditions or in the submitted UU, such as in relation to biodiversity, surface water, effects on the Solent Protected Sites and in respect of the provision of affordable housing and community infrastructure. These harms bring the development into conflict with the development plan when taken as a whole.
40. In terms of the public benefits of the scheme, the site is within both the settlement boundary and strategic allocation, which means that the principle of development is not in dispute and the location is considered sustainable. The provision of additional dwellings, including affordable dwellings, would add to the local housing stock in the location intended for growth, generating both social and economic benefits. There would also be economic benefits of a temporary nature from the construction phase. I attribute these collective benefits modest weight in favour of the scheme.
41. Weighing all these factors together, my view is that the public benefits do not outweigh the identified harms or indicate that a decision should be made other than in accordance with the development plan.
42. For the foregoing reasons, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

⁴ Standard Methodology for Calculating objectively assessed housing need as set out in the Planning Practice Guidance