
Appeal Decision

Site visit made on 2 August 2023

by Liam Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Appeal Ref: APP/B1740/W/23/3316930

Land Adjacent Wrenwood, Trotts Lane, Marchwood, Hampshire SO40 4UE

- 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 Eddie McDonagh against the decision of New Forest District Council.
 - The application Ref 22/11334, dated 15 November 2022, was refused by notice dated 6 January 2023.
 - The development proposed is two dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal is made in outline with all matters reserved. The quantum of development is clear from the description, and all evidence relating to matters of detail reserved for future approval have been treated indicatively.
3. The proposal is in proximity to several designated sites, including the New Forest Special Area of Conservation (SAC), Special Protection Area (SPA), Ramsar site; the Solent and Southampton Water SPA and Ramsar site; and the Solent Maritime SAC.
4. A Screening Direction issued by the Planning Inspectorate under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) established that the development is not EIA development. The appeal has been considered accordingly.
5. In addition to the EIA Regulations dealt with by the Screening Direction, the proposal needs to be considered in the context of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). I have dealt with this matter later in my decision.
6. The appellant submitted new evidence with the appeal in relation to trees. This has not changed the extent or nature of the proposal and the Council and other interested parties will have had an opportunity to comment on the new evidence under the appeal. It has been accepted on this basis.

Main Issue

7. The main issue is whether the site is in an appropriate location for housing, including the effect on the character and appearance of the area, protected trees and ancient woodland.

Reasons

8. The site is located on Trotts Lane an appreciable distance¹ to the north west of the built up area of Marchwood. It is an open field amongst other open fields and very low density development.
9. It is outside the settlement boundary as defined in the development plan. It is therefore within the countryside for the purposes of applying the spatial strategy within the development plan.
10. Policy STR3 of the New Forest District Council Local Plan Part 1: Planning Strategy 2020 is clear that beyond locations where site-specific policies apply and the built-up area boundary of settlements, the primary objectives are to conserve and enhance the countryside and natural environment.
11. Furthermore, development will generally be restricted unless it is appropriate in a rural setting in accordance with Saved Policy CS21 of the New Forest District Council Local Development Framework: Core Strategy 2009, which encourages development that directly supports the rural economy.
12. Policy HOU5 of the New Forest District Council Local Plan Part 1: Planning Strategy 2020 is clear that new residential development will only be permitted on suitable sites outside defined settlement boundaries where it is to meet an identified need of local people for affordable housing.
13. Saved Policy DM20 of the New Forest District Council Local Development Framework: Local Plan Part 2: Sites and Development Management 2014 sets out that residential development in the countryside will only be permitted under limited exceptional circumstances.
14. The appellant questions the weight that should be applied to Saved Policy DM20 relative to other more recent policies within the development plan. Notwithstanding, it is a saved policy part of the development plan and there is no evidence it is inconsistent with national policy.
15. When taken altogether, it is clear that the policies within the development plan create a restrictive framework for development in the countryside and limit opportunities for residential development to a set of specific exceptions².
16. In this context, the defined settlement boundary functions to provide a clear demarcation of the respective settlements and protect the countryside from urbanising effects pursuant to the development plan's spatial strategy.

¹ Around 80 metres.

² As such whilst 'most' development needs should be met within defined settlement boundaries these exception policies provide flexibility to meet justified development needs outside defined settlement boundaries.

17. The defined settlement boundary has been devised through a statutory process which has considered the qualities of the settlements and surrounding countryside. This has been endorsed through examination and it is therefore important to uphold and give significant weight.
18. I can appreciate that through the passage of time, patterns of development around settlements could change on the ground. As such, the context of the proposal's relationship with the defined settlement boundary may need to be assessed in a flexible manner, especially if things have changed markedly since it was first established.
19. However, there is no evidence that things have changed on the ground to the extent that the defined settlement boundary or associated policies should carry less weight³ or that the pattern of development has changed in favour of the proposal.
20. Whilst the appellant has sought to draw comparisons with infill development as justification for the proposal, infill development within settlement boundaries holds a different policy position in comparison and does not serve to support the proposal.
21. There is a strategic allocation for housing in the north. This was allocated within the development plan as a settlement extension into the countryside as a sustainable way to accommodate growth and forms part of the spatial strategy. It therefore has a completely different context compared to the site in this case, which is unallocated land in the countryside that departs from the spatial strategy.
22. Moreover, the site in this case is segregated from the strategic site by a substantial tree belt. As such, even when the strategic allocation gets built out, there would be no physical or visual association between the sites, meaning the pattern of development and countryside context would not change in favour of the proposal.
23. The appellant contends that because the site is within 80 metres of the defined settlement boundary it has appropriate access to services. Even if it was reasonable to draw this conclusion, the proposal would still be unjustified development in the countryside and conflict with the spatial strategy.
24. The site is surrounded by fields and low density development indicative of the countryside location. The site itself is an open field, and whilst clearly defined between a builder's yard to the north and a residential use to the south, it is undeveloped and contributes to the rural character and appearance of the area.
25. As a consequence, despite the indicative dwellings being modest in scale and the potential for some landscape mitigation, among other things, the proposal would deliver development where there currently is none and erode the rural character and appearance of the area through urbanisation.
26. Indeed, it would serve to create a linear spur of development that extends away from Marchwood and would appear as a harmful addition beyond the defined settlement boundary.

³ Notwithstanding housing land supply which is considered as part of the planning balance later in the decision.

27. The site is also adjacent to protected trees and an ancient woodland to the north⁴. These are integral to the character and appearance of the countryside location due to their verdancy.
28. In this context, it is not clear that the site is fundamentally large enough to accommodate the maximum quantum of development proposed whilst also creating an appropriate buffer zone to the protected trees and ancient woodland⁵.
29. There is some flexibility inherent in an outline proposal, and it may be possible to accommodate the smaller standard for root protection zones⁶ around trees in a general sense.
30. However, there would be a considerable shortfall in meeting the larger buffer zone to the ancient woodland designation and this raises serious questions about whether the site could be designed and otherwise delivered in an appropriate manner.
31. For example, in citing the ancient woodland guidance, the Council points out that encroachment into the buffer zone could result in increased light pollution, changes to landscape character, and introduction of invasive species, among other things.
32. Furthermore, that if the buffer zone was fully implemented, the dwellings proposed would likely be cramped in very close proximity to the western boundary with Trotts Lane.
33. The appellant contends that the term 'should' donates a degree of flexibility in how the buffer zone is applied. However, I also note the guidance talks about buffer zones being 'at least' 15 metres.
34. In any event, I am open to the idea that there might be some flexibility in how buffer zones are applied on a case by case basis. However, the appellant has not provided sufficient analysis of the various factors covered by the guidance and has not fully justified a buffer zone reduction in this case.
35. The Arboricultural Impact Assessment and Method Statement does not address the ancient woodland designation or guidance in any detail.
36. Consequently, it is not clear why a buffer zone of less than 15 metres would be appropriate in this particular case and I have given the appellant's arguments limited weight in this regard.
37. Altogether, the harmful effects on the protected trees and the ancient woodland would compound the other harms identified.
38. Overall, the proposal would deliver open market dwellings in the countryside, which would not meet any of the identified policy exceptions and would conflict with the spatial strategy within the development plan and erode the countryside in spatial terms.

⁴ Whilst I note the protected tree within the site itself, I am satisfied this would not be overly restrictive given it is only one tree and there is flexibility inherent in an outline proposal.

⁵ In accordance with guidance: ancient woodland, ancient trees and veteran trees: advice for making planning decisions 2022 from Natural England and the Forestry Commission.

⁶ In accordance with British Standards, notwithstanding some minor shortfalls identified on the plans by the Council and considering potential foundation and construction techniques identified by the appellant.

39. The proposal would also result in the fundamental urbanisation of the site and harm protected trees and ancient woodland, eroding the rural character and appearance of the countryside.
40. It would therefore not accord with Policies STR1, STR3, ENV3, ENV4 and HOU5 of the New Forest District Council Local Plan Part 1: Planning Strategy 2020, Saved Policy CS21 of the New Forest District Council Local Development Framework: Core Strategy 2009 or Saved Policy DM20 of the New Forest District Council Local Development Framework: Local Plan Part 2: Sites and Development Management 2014.

Planning Balance

41. The Council cannot demonstrate a five year housing land supply and therefore the policies which are most important for determining the application are deemed to be out of date and Paragraph 11(d) of the National Planning Policy Framework (the Framework) is engaged.
42. I acknowledge that the proposal would deliver housing to help address the shortfall in housing land supply and that, pursuant to Paragraph 69 of the Framework, small and medium sized sites can make an important contribution and be built out very quickly.
43. Nonetheless, the contribution in this case would be very limited and as such, the socio economic benefits derived from the proposal would be similarly limited.
44. On this basis, even if the shortfall in housing land supply was deemed to be substantial, the significant harm derived from multiple conflicts with policies in the development plan relating to spatial strategy, character and appearance would result in adverse impacts that would significantly and demonstrably outweigh the benefits.
45. Consequently, the proposal would not benefit from the presumption in favour of sustainable development under Paragraph 11(d)(ii) of the Framework and there are no material considerations indicating that a decision should be taken otherwise than in accordance with the development plan, where there is conflict as a whole.

Other Matters

46. Whilst I am mindful of the Habitats Regulations, I am dismissing the appeal for other reasons alone and it has not been necessary to consider the potential impact of the proposal on the designated sites concerned or make a finding on any associated planning obligations or other mitigation, including the merits of accepting late evidence pursuant to these matters under the appeal.
47. The Council has referred to isolated development under Paragraph 80 of the Framework. It is a very specific matter within the wider ambit of development in the countryside should not be conflated with policies relating to residential development in the countryside more generally.

48. It is not clear to me whether the site is truly isolated or not in this case given the limited evidence on the matter. In any event, it has not been necessary to make a direct finding in this regard given my conclusions about conflict with the development plan's spatial strategy.
49. The appellant refers to another planning permission⁷, contending that it establishes development can be in close proximity to ancient woodland. However, this was determined in 2008 and I note the development plan has changed significantly since then. It is also not clear that the same guidance on ancient woodland buffer zones was in effect at that time, as in this case. Consequently, I have given this planning permission limited weight in my decision.
50. I note the history of enforcement action, but I have determined the appeal based on the proposal in front of me. Similarly, letters in support of the proposal do not in themselves make it acceptable, and my assessment is based on the development plan and other material considerations.

Conclusion

51. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR

⁷ 08/92684