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# Appeal Decision

Site visit made on 15 August 2023

**by Alison Partington BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 September 2023**

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**Appeal Ref: APP/P2114/W/22/3312325**

**Land Adjacent to The Shieling, New Road, Wootton, Isle of Wight,  
PO33 4JW**

- 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 Dr Akundi and Ande against the decision of Isle of Wight Council.
  - The application Ref 22/00630/FUL, dated 31 March 2022, was refused by notice dated 16 June 2022.
  - The development proposed is five residential lodges with private garden, parking and shared access.
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## Decision

1. The appeal is allowed and planning permission is granted for five residential lodges with private garden, parking and shared access at land adjacent to The Shieling, Wootton, PO33 4JW in accordance with the terms of the application, Ref 22/00630/FUL, dated 31 March 2022, subject to the conditions set out in Annex A.

## Main Issue

2. The main issue in the appeal is whether the site represents a suitable location for housing having particular regard to its accessibility to shops and services.

## Reasons

3. The appeal site is a field that forms part of the extensive land associated with The Shieling, but which has its own access onto New Road. Permission has previously been granted<sup>1</sup> for the development of the site for five holiday properties. The current proposal is identical to that which has approval other than it proposes that the properties would be used for permanent residential rather than holiday use.
4. Policy SP1 of the *Island Plan Core Strategy (adopted March 2012)* (CS) indicates that, to ensure development takes place in the most sustainable locations, new development should take place on appropriate land within, or immediately adjacent to the Regeneration Areas and Rural Service Centres.
5. Outside of these areas it states that development will only be supported if it is meeting a specific local need or is tourism related. Paragraph 5.31 of the supporting text indicates that "local need" includes identified local requirements for housing, a demonstrable contribution to maintaining local facilities and maintaining or enhancing the wider viability of local communities. In addition,

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<sup>1</sup> Application Reference 20/00267/FUL

CS Policies SP7 and DM17 support proposals that increase travel choice and provide alternative means to travel to the car.

6. The overall approach of CS Policy SP1 of seeking to direct development to the most sustainable locations broadly accords with the approach the *National Planning Policy Framework* (the Framework) takes to the location of new housing. Therefore, notwithstanding the lack of a 5 year housing land supply, I consider moderate weight can still be given to this policy. In addition, policies DSP7 and DM17 are in line with the Framework's objective of promoting sustainable transport.
7. The nearest settlement to the appeal site is Wootton which Policy SP1 defines as a Rural Service Centre. However, the appeal site is neither within, nor adjacent to the boundary of Wootton. It is not disputed that the Council cannot demonstrate a 5 year housing land supply and that the housing delivery test results show that housing delivery on the island in recent years is low. Whilst in general this shows that there is a need for housing on the island, there is no evidence before me to suggest that the appeal scheme is meeting a specific identified local need for housing. Whilst future occupiers are likely to use local shops and facilities there is nothing to indicate that the proposal is needed to ensure their viability.
8. Whilst with distance from Wootton New Road becomes more sylvan in character and houses and other developments are less visible from the road, nonetheless, there remains linear development along both sides of the road, and so the proposed dwellings would not be physically isolated from other buildings, even if some of these are tourism related.
9. In line with its designation as a Rural Service Centre, Wootton has a reasonable range of shops and other services and facilities. It also has regular bus services to a number of the larger towns on the island. The site is approximately 1.6km from Wootton. For around half this distance, New Road has a footway on at least one side of the road, and street lighting, although in places the footway is quite narrow. Beyond this an informal footway, marked by a white line rather than a kerb exists on a more intermittent basis, and in places this is unmade. The road is also wooded and so quite dark. These characteristics may deter use by pedestrians and cyclists.
10. Overall, whilst there would be a degree of choice in mode of transport, given the distance to Wootton and the nature of the road, it is unlikely to be overly conducive to walking or cycling, particularly when dark or in inclement weather. As such, future occupiers are likely to be largely dependent on the use of the private car to access services and facilities. This would not accord with the aim of CS Policies SP7 and DM17 outlined above.
11. In support of the appeal my attention has been drawn to some pre-application advice given for a nearby site which indicated that that site was within walking distance of services. However, that site was slightly nearer to Wootton, and also this was advice from Officers not a formal decision of the Council.
12. Both parties have also drawn my attention to a number of appeals<sup>2</sup> that have considered the suitability of a site for housing development having regard to its accessibility to services. In some the Inspector found the site was acceptable in

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<sup>2</sup> Appeal References APP/P2114/W/19/3228085, APP/P2114/W/21/3285607 and APP/P2114/W/21/3272543

this regard, in others not. What is clear is that this is a matter that requires the judgement of the decision maker based on the specific characteristics of the site in terms of the distance and nature of the route between it and various facilities and services. In these respects, the circumstances of none of the sites in these appeals are directly comparable to this site.

13. All in all, I consider that the appeal site would not be a suitable site for new housing having particular regard to its accessibility to shops and services. Accordingly, it would conflict with CS Policy SP1 outlined above, and although not mentioned in the reason for refusal it would also not accord with CS Policies SP7 and DM17.

## **Other Matters**

### *Protected Habitat Sites*

14. The appeal site lies within the 5.6km buffer zone for the Solent and Southampton Water Special Protection Area (SPA). This is a European Site of Nature Conservation Importance that is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. As the competent authority for the purposes of this appeal, I am prevented from granting permission unless the proposal would not adversely affect the integrity of the protected sites.
15. The waters of The Solent are internationally important for wildlife and the coast, particularly its mudflats, shingle and salt marshes, are important for a significant number of overwintering and breeding bird species. The conservation objectives for the protected sites within this area are to ensure that the integrity of the sites are maintained or restored as appropriate.
16. Any new residential development in this area is likely to have a significant effect on the designated sites as a result of increased recreational pressure from future occupants. To avoid such harmful impacts, mitigation is required. The *Solent Recreation Mitigation Strategy (December 2017)* sets out the mitigation measures required for new housing development and a sliding scale of contributions based on property sizes, which increase each April.
17. The appellant has submitted two Unilateral Undertakings (UU) dated 22 May 2022 and 9 April 2023. Together these make provision for mitigation in the form of a financial contribution. The Council have confirmed that these address its concerns in respect of the mitigation from recreational impacts.
18. I am satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. Therefore, it meets the three statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework. Furthermore, there is no reason to doubt that the Solent Recreation Mitigation Partnership, which consists of the relevant local authorities and public bodies operating in the area, as the responsible public body, will spend the money in the way that it is intended.
19. As such, I have completed my appropriate assessment and conclude that the proposal would not adversely affect the integrity of the habitat sites through increased recreational pressure.

20. In addition, recent advice from Natural England has indicated that The Solent is in an unfavourable condition from nitrate enrichment causing eutrophication of the designation sites and that this is having a detrimental impact upon protected habitat and species. Natural England have advised that wastewater arising from additional housing that, once treated, discharges into the SPA is likely to contribute further to these adverse effects and so avoidance measures are required.
21. To address this the Council has issued a position statement on nitrogen neutral housing development (April 2022). This highlights that the Wastewater Treatment Works (WwTW) at Sandown, Brighstone, Shorwell or St Lawrence outfall into the English Channel and so developments that connect to these do not have to demonstrate nutrient neutrality. The application form indicates that the development would utilise a septic tank. This is a sealed unit that would be emptied and disposed of at Sandown WwTW. Subject to a condition securing this arrangement, the proposal would not affect nitrogen inputs into The Solent and so would not adversely affect the SPA in this regard.

#### *Affordable Housing*

22. Policy DM4 of the CS indicates that in order to deliver the necessary affordable homes over the plan period small sites such as the appeal site are required to provide a financial contribution towards affordable housing. The *Affordable Housing Contributions Supplementary Planning Document (adopted March 2017)* (SPD) sets out the approach for calculating the required financial contribution which is based upon the value of the property at first sale/occupation.
23. The UU dated 22 May 2022 submitted by the appellant would provide a contribution calculated on the basis of the approach set out in the SPD and the Council have confirmed that it meets the requirements of Policy DM4.
24. Given this policy context I am satisfied that the planning obligation for affordable housing is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. Therefore, it meets the three statutory tests outlined above.

#### *Other Considerations*

25. Various concerns have been raised regarding the impact of the proposal on the character and appearance of the area, trees and wildlife. However, in these respects the proposal for permanent residential development would be no different from the scheme for tourist accommodation that has already been approved on the site. Nor would the proposal cause any harm to existing tourism facilities in the area.
26. In addition, third parties have raised a variety of highway safety concerns that may result from the proposed scheme. However, I note that the highway authority has not objected to the appeal scheme and in the light of this, and observations made during my site visit, I am satisfied that the proposed scheme would not have an unacceptable impact on highway safety in the area.
27. It has been argued that the proposal would increase demand for medical services in the area. However, I have not been given any detailed evidence

that shows that existing facilities are full or would be unable to cope with the demands arising from the development.

### **Planning Balance**

28. In the absence of a five year supply of housing land, paragraph 11d) of the Framework indicates that permission should be granted unless i) the application of policies in the Framework that protect areas or assets of importance provides a clear reason for refusing the development proposed or ii) the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
29. As outlined above, I have found that there would not be a significant effect on a habitat site which would prevent the application of the presumption in favour of sustainable development. Moreover, there is no other evidence before me to indicate that there are any other policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development. As such, paragraph 11 di) does not apply in this case. Nonetheless, an absence of harm in this regard is a neutral factor in the planning balance.
30. The adverse impact of the proposal would result from its conflict with the spatial strategy as set out in CS Policy SP1 and the limited accessibility of the site contrary to Policies SP7 and DM17. Nonetheless, taking into account the fact that, as outlined above there would be a degree of choice in mode of transport and the scale of the proposal, the adverse impact arising from the conflict with the development plan would be limited and would not seriously undermine the spatial strategy of the CS.
31. The appeal scheme would contribute 5 dwellings to the housing supply and make a contribution towards the provision of affordable housing on the island. I have not been provided with any evidence to indicate how many years supply of housing land the Council can demonstrate but note that the housing delivery test results show that delivery has been falling significantly below the housing requirement for several years. I therefore give significant weight to the contribution the site would make to the housing land supply. In addition, there would be benefits to the local economy both through the construction of the dwellings and the spend of future occupiers.
32. Overall, I consider that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the presumption in favour of development applies.
33. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case, although the proposal conflicts with policies SP1, SP7 and DM17 of the CS, the presumption in favour of the development constitutes a material consideration of significant weight that justifies a determination other than in accordance with the development plan.

### **Conclusion and Conditions**

34. For the reasons set out above I conclude the appeal should be allowed.

35. In addition to the standard implementation condition, to provide certainty it is necessary to define the plans with which the scheme should accord (condition 2). Condition 3 is necessary in the interests of the character and appearance of the area and to accord with CS Policy DM2. For the same reason, and to protect the existing trees on the site that are being retained and to accord with CS policies DM2 and DM12, conditions 4 and 5 are required.
36. In the interests of safeguarding biodiversity and in accordance with policies DM2 and DM12 of the CS, condition 6 is required. For highway safety reason and to ensure compliance with CS policies DM2 and DM12 condition 7 is required. To ensure the site is satisfactorily drained, to ensure the protection of protected habitats and to accord with policies SP5, DM2, DM12 and DM14 condition 8 is necessary.
37. Conditions 4, 5, 6 and 8 all need to be pre-commencement conditions as they either relate to works that need to be in place before construction works commence or need to take place as part of the construction of the development. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions.
38. Where necessary and in the interests of precision and enforceability I have altered the wording of the suggested conditions. The Planning Practice Guidance indicates that the removal of permitted development rights should only be done in exceptional circumstances. Given the proposed site layout I see no reason why the Council's suggested removal of all such rights is necessary to ensure adequate parking and amenity space for each dwelling is retained or to protect the character and appearance of the area. As a result, I have not imposed this suggested condition.

*Alison Partington*

INSPECTOR

## **Annex A**

### **Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No PL02-001 rev A; Existing Site Layout Drawing No PL02-002 rev A; Proposed Site Layout Drawing No PL02-003 rev A; 3 Bed Floor Plan Drawing No PL02-004 rev A; 3 Bed Apex Roof Elevations Drawing No PL02-005; 2 Bed Floor Plan Drawing No PL02-006 rev A; 2 Bed Proposed Elevations Drawing No PL02-007; and Tree Plan Drawing No PL02-008.
- 3) No development above ground level shall take place until details of the materials and finishes to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a cellular confinement system has been installed for the existing access and driveway to the site (as shown on drawing number PL02-008) and this shall be retained as such thereafter.
- 5) No site clearance, preparatory work or development shall take place and no equipment, materials or machinery shall be brought onto the site for the purposes of the development hereby permitted, until a scheme for the protection of the retained trees in accordance with British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to, and approved in writing by, the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved and any protective fencing shall be erected prior to work commencing on site and shall be maintained until all equipment, machinery and surplus materials related to the construction of the development have been removed from the site. Nothing shall be stored or placed in any fenced area in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, unless otherwise authorised by this permission.  
  
[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]
- 6) No development shall take place until a site wide ecological mitigation and enhancement plan has been submitted to, and approved in writing by, the local planning authority. This plan shall include all measures recommended within submitted Preliminary Ecological Appraisal, reptile survey report and bat activity survey report (Eagle Eye Environmental Solutions Ltd, June 2019) together with a construction management plan, planting and landscaping plan and lighting strategy. Development shall take place in accordance with the plan thereafter, and mitigation measures included within the plan shall be retained as such thereafter.

- 7) No dwelling hereby permitted shall be occupied until space has been laid out within the site in accordance with Drawing No PL02-003 rev A for 10 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
  
- 8) No development shall take place until a scheme for the drainage and disposal of surface and foul water from the development hereby permitted has been submitted to, and approved in writing by, the local planning authority. Foul water shall be directed to a sealed tank (septic tank) and any waste emptied from the tank shall be taken to and treated at the Southern Water Wastewater Treatment Works at Sandown. Development shall be carried out in accordance with the approved scheme, which shall be completed prior to the first occupation of any of the dwellings hereby permitted and be retained thereafter.