



Appeal Decision

Site visit made on 15 August 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2023

Appeal Ref: APP/P2114/W/22/3309729

Silver Retreat, Ash Grove, Luccombe, PO37 6RX

- 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 Mr Paul Silver against the decision of Isle of Wight Council.
 - The application Ref 21/02541/FUL, dated 10 December 2021, was refused by notice dated 23 May 2022.
 - The development proposed is 2 no. 3 bed holiday chalets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have included the appeal property's full postcode, and the name of the road the appeal site is located upon has been slightly altered from that specified on the application form, these changes have been made in the interests of accuracy.
3. The Council has referred to coppice works to a protected tree identified as T11 in the updated Arboricultural Impact Assessment report prepared by M Jones Arborist Consultancy dated February 2022 (AIA). Such works, whether already permitted or not, are beyond the consideration of this appeal proposal and a separate matter between the respective parties. I have determined the appeal on this basis.

Background and Main issues

4. The Council's reason for refusal no. 4, specified on its decision notice, related to potential effects of foul water drainage into the Solent, and its effects upon the Solent and Southampton Waters Special Protection Area and Ramsar Site and the Solent Maritime Special Area of Conservation. The appellant has provided confirmation with their appeal that foul water from the site can drain into the Sandown Wastewater Treatment Works, which would not then drain into the Solent. The Council has made me aware that subject to a suitably worded condition to this effect, its reason for refusal no. 4 would no longer be relevant. I see no reason to disagree and accordingly, I have determined the appeal on this basis. The main issues with this appeal are the effect of the proposed development upon:
 - the character and appearance of the area, with particular regard to its siting and design, and its effect upon protected trees; and
 - protected species.

Reasons

Character and appearance

5. The appeal site is undeveloped land to one side of the large rear garden belonging to Silver Retreat, it contains several trees, some are mature. There are public footpaths alongside two of the appeal site's boundaries, including part of the coastal path and one along part of Ash Grove that bounds one side of the appeal site. There are hedges along its boundary onto Ash Grove, which includes an existing access via a field gate. The rear boundaries of three properties that face onto a different part of Ash Grove adjoin the other side of the appeal site. The trees within the appeal site are all protected under a wider group Tree Preservation Order (re. 20/00022/TPO).
6. The appeal site is situated within the Isle of Wight Area of Outstanding Natural Beauty (AONB) and the statutory duty contained in Section 85(1) of the Countryside and Rights of Way Act 2000 (CROW Act), requires regard to be had to conserving and enhancing the natural beauty of the AONB. This duty is also reflected in paragraph 176 of the National Planning Policy Framework (the Framework) that states great weight should be given to conserving and enhancing landscape and scenic beauty of the AONB.
7. On my site inspection I observed that the many trees, hedging and planting on and near to the appeal site, give it a strong landscaped setting and verdant appearance. This positively contributes to the scenic quality of this part of the landscape in this coastal edge location. Although there are some one and two storey buildings nearby, most are well screened or set with landscaped settings, minimising public views of them.
8. The proposed holiday chalets would be sited amongst existing trees and served by a new access road, which would utilise the existing access point onto Ash Grove. Nevertheless, the proposed chalet locations would be highly visible from the public footpaths, there would be direct views of them above some of the hedging, between planting, through the access, and underneath the raised canopies of mature trees. Furthermore, these observations were made in August when the trees, hedging and other planting was in leaf. During the winter months when this is not so, the siting of the proposal would likely be even more noticeable. The prominent and noticeable siting of the proposed development would contrast starkly with the current appearance of the appeal site, and would be harmful to the surrounding area.
9. The proposed chalets each have 3 no. bedrooms, they are considerably wide and deep, and whilst they are not particularly tall or dominant, their individual scale and form would be akin to that of a bungalow, which would make them highly conspicuous in this location. Their hipped roofs clad in slate with a mixture of horizontal and vertical cedar cladded sides do little to minimise the scale and size of them. As such, the scale and appearance of the proposed chalets, including the detail of their design such as their projected window features, would be harmful to the scenic beauty of the landscape. In addition, the new access and parking areas, along with the likely ancillary use of the adjoining spaces around them would significantly encroach into this undeveloped area. With there being direct public views of the proposed chalets and these areas, this would add to the already identified harm to the character and appearance of the area.

10. Whilst additional landscaping could in time soften the visual impact of some of the proposals, this would likely take some time to become established and effective. Furthermore, there would still likely be views of the proposals from Ash Grove along the new access road. Consequently, a condition requiring additional planting would not overcome the above identified harm.
11. Trees T16, T18, T24 and T27 are shown in the AIA to have their root protection areas partly across the proposed new access road. The said trees have a collective group value which adds considerably to the special scenic quality of the landscape in this particular area. Notwithstanding that the AIA states the effect on their root protection areas would be insignificant and not damaging, no mitigation in terms of ground surfacing materials have been proposed to minimise compaction damage. A design solution such as a cellular membrane, suggested by the Council, could minimise such ground disturbance works to protect these trees. As only a small part of each of the root protection areas would be affected, had I been minded to allow the appeal, a suitably worded condition could have been used to control the exact design of the new access road to protect these trees.
12. I note the appellant has suggested a micro-siting condition in regard to the root protection areas. However, for the reasons outlined above this would not be necessary.
13. The AIA identifies that trees T20, T21, T22, and T23 require removal for the new access road and one of the proposed chalets, these trees are said to have either notable decay or a life expectancy less than 10 years. They are also classified as having low quality or value, or very limited arboricultural value due to their condition. Whilst these trees would have some wider group value, based on the conclusions of the AIA, it would not be reasonable to object to their removal. Other than the recommended removal of T7 as it is in a state of collapse, the AIA does not recommend removal or works to any of the other protected trees on the appeal site. Had I been minded to allow the appeal, suitable alternative planting could have been secured through a suitably worded condition. It is also noteworthy that the Council also did not object to the removal of these trees.
14. For the above reasons, I therefore conclude that the proposal would be harmful to the character and appearance of the area, neither would it conserve or enhance the scenic and natural beauty of the AONB. As such, the appeal scheme would be contrary to Policies DM2 and DM12 of the Island Plan Isle of Wight Core Strategy (2012) (the IP), which amongst other things, support high quality design which compliments the character of the area, and conserves and enhances the AONB. In addition, and for similar reasons the proposal also conflicts with paragraphs 130 and 176 of the Framework, that requires development is sympathetic to local character and landscape setting, and requires great weight is given to conserving and enhancing the landscape and scenic beauty of the AONB.
15. In addition, the proposal is also inconsistent with the objectives of the Isle of Wight Area of Outstanding Natural Beauty Management Plan 2019-2024, that seeks to ensure new economic development would conserve and enhance the Isle of Wight AONB landscape.
16. The Council referred to the proposal conflicting with Policy SP5 in respect of this issue. That policy is focussed on the effects of development upon the

historic and natural environment, particularly sites of designated ecological interest. I did not find that policy to be determinative in this case.

Protected species

17. The appeal site contains mainly unmanaged grassland and scrub along with trees and hedges. A Preliminary Ecological Appraisal, prepared by Arc, dated November 2021 (PEA) was undertaken, it assessed the likely effects of the proposal upon protected species.
18. The PEA identified a number of protected species that could be affected by the proposed development. In terms of bats, an ash tree, which is one of the proposed trees to be felled as part of the proposal, is said to have a high roost potential. The PEA recommends that three further Phase 2 surveys be undertaken on this tree at the optimal time of year, to determine the presence of bats.
19. In addition, the appeal site was identified as having suitable habitat for reptiles, including a high potential for slow worms being present on the site. A further suite of reptile presence/likely absence surveys are recommended in the PEA, to be undertaken at the appropriate time of year to determine the presence of reptiles at the site.
20. I am not aware that these additional surveys have been undertaken and based on the recommendations of the PEA there is a reasonable likelihood that protected species could be affected by the proposed development, the effects of which are currently unknown. I note the appellant has suggested that these additional surveys can be the subject of pre-commencement conditions. However, Paragraph 99 of Circular 06/2005 is clear that a precautionary approach should be taken in respect of protected species, and surveys should be undertaken prior to the grant of planning permission, to take full account of the presence of protected species, which are an important material planning consideration.
21. Consequently, it would be unreasonable to condition the further surveys as this information is required from the outset to make an informed decision, consistent with the clear stated guidance in paragraph 99 of Circular 06/2005. Without the recommended surveys being carried out, I am unable to determine what proposed mitigation measures would adequately safeguard or compensate for any harm caused to protected species by the proposal.
22. I note the PEA does not recommend any additional surveys in respect of nesting birds, mammals, and amphibians subject to relevant mitigations, and I see no reason to disagree with these recommendations. Had I been minded to allow the appeal the other mitigations recommended in the PEA could have been the subject of an appropriately worded condition.
23. I therefore conclude that there is insufficient information to fully assess the effects of the proposed development upon protected species, contrary to the relevant parts of Policies DM12 and SP5 of the IP, that collectively seek to protect the Island's habitats and biodiversity and avoid development that has a demonstrable adverse effect to its natural environment. In addition, the proposal is also contrary to paragraphs 174 and 180(a) of the Framework, which states that development should contribute to and enhance the natural and local environment and planning permission should be refused where

significant harm to biodiversity cannot be avoided, and seeks to avoid development that would adversely affect biodiversity and wildlife habitats without appropriate mitigation.

Other Matters

24. The appellant has referred to the support offered by Policy SP4 of the IP for high-quality year-round tourism, and the economic benefits of the scheme being consistent with the objectives of Policies SP1 and SP3 of the IP. It is also stated that the Council did not object to the principle of tourism development in a pre-application enquiry that preceded the application. I acknowledge the support for the proposal provided by such policies of the IP, but the proposal must be considered against all relevant policies within the IP along with other considerations. Complying with those policies in this case does not outweigh the identified harm to the character and appearance of the area and the effects of the proposal upon protected species.
25. Similarly, the appellant has also referred to the objectives of the Island's Destination Management Plan (DMP), which is said to support sustainable tourism and protect the landscape. I have not been provided with a copy of that document. However, like above, the in-principle support for tourism development is acknowledged and has been taken into account in my decision. Although, in this case based on the information provided by the appellant, the proposal would appear to be partly inconsistent with the DMP in terms of its landscape protection objective.
26. The appellant's arguments in favour of the proposal; that the site is part of an under-used garden and makes the best use of the site; that it is located near to Shanklin, bus stops, and the coastal path and offers a unique holiday experience; that the entrance to the site would be enhanced as part of the proposal; its proximity to local ecological designations; that there are already holiday and second homes nearby; that views would be retained through the site towards the sea; that in the appellants opinion it would have less landscape effect than buildings nearby; its low traffic generation; and mention of the lack of high quality tourist accommodation on the Isle are noted. I have taken these issues into account in my decision, however either individually or collectively they do not outweigh the identified harm to the landscape and protected species in this case.
27. I acknowledge that the proposals could be constructed using good quality materials and a condition could be imposed to ensure the chalets stay as holiday accommodation. Although, these points would also likely be requirements of any such well-designed tourism accommodation in this location, and are neutral matters in my decision.
28. The presumption in favour of sustainable development, referred to in paragraph 11 of the Framework, has been raised by the appellant. Noting that the IP was adopted more than 5 years ago,¹ and that paragraph 11 d) states where the most relevant policies of the Local Plan are out of date the tilted balance in paragraph 11 d ii) is engaged unless there is conflict with certain policies of the Framework. Footnote 7 to paragraph 11 d i) states that this includes policies relating to Areas of Outstanding Natural Beauty, such as in this case. Consequently, the tilted balance would not be engaged. Moreover,

¹ Paragraph 33 of the Framework.

the relevant parts of the IP policies relating to the character and appearance of the area, and protected species are also consistent with the Framework.

Conclusion

29. For the reasons outlined above, the proposed development conflicts with the development plan taken as a whole and the Framework, and would not therefore comprise sustainable development. There are no other considerations which indicate a decision other than in accordance with the development plan. I therefore dismiss the appeal.

A Hunter

INSPECTOR