



Appeal Decision

Site visit made on 31 October 2023

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2023

Appeal Ref: APP/C1760/W/23/3314430

Purbeck, Whinwhistle Road, East Wellow, Hampshire SO51 6BN

- 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 and Mrs Jupe against the decision of Test Valley Borough Council.
 - The application Ref 22/02219/FULLS, dated 26 August 2022, was refused by notice dated 2 November 2022.
 - The development proposed is erection of one dwellinghouse, garage and associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the site is a suitable location for a dwelling, having regard for the locational strategy of the development plan; and
 - The effect of the proposal on the integrity of protected habitats.

Reasons

Location

3. Policy COM2 of the Test Valley Borough Revised Local Plan (Local Plan) sets out the settlement hierarchy. This Policy permits certain development within the settlement boundaries provided that it is appropriate to the other policies of the Local Plan. Development outside the boundaries of settlements will only be permitted if it is appropriate in the countryside as set out in the Local Plan, or it is essential to be located in the countryside. As such, the Policy provides a clear spatial strategy that directs development towards settlements while providing flexibility to promote sustainable development in rural areas.
4. The appeal site is a parcel of land that appears to be a continuation of the rear garden of Purbeck. The central part of this expansive plot comprises predominately lawn and there is a scattering of trees and shrubs. The site also has a group of outbuildings in a corner of the large plot and is well-screened by mature vegetation.
5. The site is bounded on three sides by residential properties and is therefore not in an isolated location. However, evidence shows that the appeal site is outside of the settlement boundary of East Wellow, and within the countryside for the purposes of the Local Plan. The appellants also acknowledges that criteria for

appropriate or essential development in the countryside, as set out in Policy COM2, would not be satisfied by this proposal, and that there would be a conflict with the development plan in regard to this matter. I agree with this assessment.

6. The appellants assert that the harm arising from this conflict with policy would be significantly limited due to the level of screening around the appeal site and its close proximity to the settlement boundary. Be this as it may, while I note the complexities in defining such boundaries, the supporting text of Policy COM2 recognises that some additional development in rural villages may be appropriate and is specific about development outside of settlement boundaries.
7. This flexibility is largely reflective of guidance set out in the National Planning Policy Framework (the Framework) which requires policies to be responsive to local circumstances, support housing development that reflects local needs, and seeks to maintain the vitality of rural communities. I find that Policy COM2 is clear and yet not overly restrictive and is generally consistent with national guidance with regards rural housing.
8. Also, mindful of court judgments regarding the application of policy, it appears to me in the policy context outlined above, a site should not be deemed suitable just because it is close to a rural settlement boundary. Moreover, while accepting one new dwelling can have a significant impact on the supply of homes, permitting one dwelling in an unsuitable location could contribute to undermining a spatial strategy.
9. The evidence presented indicates that the borough has historically benefitted from the supply of windfall sites which is relevant in this case.¹ However, it is stated that these are often from redevelopments within the settlement boundaries established within the adopted Local Plan or through the reuse of buildings in rural areas. These circumstances do not apply in this case.
10. There are examples of dwellings at the rear of properties fronting Whinwhistle Road in the vicinity of the appeal site. However, those developments are within the settlement boundary. As already outlined, this would not be so with this proposal. These matters have not altered my findings for these reasons.
11. Accordingly, I find that the appeal site would not be a suitable location for residential development, having regard for the locational strategy of the development plan. The proposal would be contrary to Policy COM2 of the Local Plan in respect of this issue.

Habitats

12. The appeal site is within the zone of influence (ZoI) for the Solent and Southampton Waters Special Protection Area (SPA) and Special Areas of Conservation (SAC). These designations cover unique and complex marine and estuarine habitats that support flora, including specialist plant species, and varied fauna. The SPA also forms one of the most important sites for wildlife in the UK and is internationally important for migratory birds.
13. Evidence has shown these protected habitats are in unfavourable condition due to an exceedance in nitrogen. Natural England (NE) state that additional

¹ Ref: Housing Implementation Strategy 2022

development that would lead to a net increase in population served by wastewater systems, including new homes, would have a likely significant adverse effect on the integrity of the habitats.

14. The site is also located within the 13.6 Km ZoI for the New Forest SPA. The New Forest is an internationally important area for its wildlife and has been designated as a SPA to protect birds, in particular nightjar, Dartford warbler, woodlark, hen harrier, honey buzzard, wood warbler and hobby. Evidence shows that this zone represents where new residential development has the potential of an in-combination adverse effect on the integrity of the New Forest SPA, through increased recreational pressure which could harm these habitats.
15. Given the unfavourable condition and the sensitivity of the protected habitats outlined above, a single new dwelling, if it was to result in a net increase in nutrients being released in the catchment area, or that would increase recreational pressure in the protected habitats of the New Forest, is likely to have an adverse impact on the integrity of these habitats. Consequently, an Appropriate Assessment is required in this case. The purpose of the assessment is to ascertain whether or not the proposal would adversely affect the integrity of the areas.
16. This proposal would result in a new home in the catchment area and therefore likely significant adverse effect on the integrity of the protected water habitats cannot be ruled out. NE has advised that in order to mitigate such an adverse effect, it needs to be demonstrated that a development would be neutral in terms of the nitrogen it may produce.
17. The development would result in a net increase in residential dwellings within ZoI of the New Forest SPA. This in turn would increase the recreational pressure in these sensitive habitats, such that the development would likely result in a significant adverse impact on the integrity of that habitat also.
18. In respect of the New Forest SPA, to address this issue, the Council has adopted an interim mitigation strategy whereby a scale of developer contributions of £1,300 per new dwelling has been agreed upon. These contributions will be pooled to fund, amongst other things, the delivery of a new strategic area of alternative recreational open space.
19. In regard to this mitigation, the Council, in this appeal process, has acknowledged the receipt of the Habitats Mitigation Contribution Form and has withdrawn its objection on this matter. An image of a completed form, stating the application reference, and indicating payment of this contribution made by the appellants in accordance with S111 of the Local Government Act 1972, has also been presented. However, as the competent authority in respect of this matter, I find nothing before me, such as a completed legal agreement, that gives certainty that this mitigation would specifically address the identified adverse impacts on this New Forest habitat that would result from this development.
20. With regards the Solent and Southampton protected habitats, the appellants have submitted a nitrate calculation in this appeal. The conclusions of this are disputed by the Council, but I am satisfied that a consensus could be reached on this matter.

21. This aside, the evidence confirms that there would not be scope for on-site mitigation measures to ensure that this project would be nutrient neutral. In order to achieve nitrate neutrality, the appellants propose to purchase Nitrate Mitigation Credits from Eastleigh Borough Council and Roke Manor Limited, with whom, it is stated, have agreements with Test Valley Borough Council.
22. The appellants state that the credits agreement will be submitted once confirmation that the credits have formally been secured. However, a legal agreement related to this matter has not been submitted with this appeal. It is asserted that a legal agreement is not necessary at this time and instead a pre-commencement or negatively worded condition would address this matter.
23. Planning Practice Guidance (PPG) advises whether a condition could be used to require an applicant to enter into a planning obligation or agreement. However, while the principle is not ruled out, the PPG states that this is "*...in exceptional circumstances...where there is clear evidence that the delivery of the development would otherwise be at serious risk.*" The PPG goes on to say that this may apply '*... in the case of particularly complex development schemes.*'
24. The scheme before me is for a minor development and, in my judgement, no exceptional circumstances have been presented for this course of action in this case. Moreover, without a legal agreement, there remains some doubt as to whether, when, and by whom the required mitigation would take place such that the adverse effects could be ruled out. As such, imposing a condition would not provide the certainty necessary to address this matter in this appeal.
25. Consequently, I find that the proposal would have a significant adverse effect on the integrity of protected habitats. In the absence of certainty that the identified mitigation in respect of this issue would be delivered, the proposal would be contrary to Policies COM2 and E5 of the Local Plan. These collectively state, amongst other matters, that development that is likely to result in a significant effect, either alone or in combination, on an international or European nature conservation designation will need to satisfy the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended).
26. In regard to this matter the proposal would also be inconsistent with guidance set out in the New Forest SPA Mitigation - Interim Framework.

Planning Balance

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004, states that development should be in accordance with the development plan unless material considerations indicate otherwise.
28. The appellants assert that this proposal would improve the appearance of the site with the removal of dilapidated buildings. While these outbuildings appeared poorly maintained, these relatively small structures did not appear a particularly negative feature in this setting. In any event, there is nothing before me suggesting that this proposal would be the only way to secure this limited benefit. Accordingly, this matter attracts limited weight.
29. The Council states that the proposal would have a neutral impact on the character of the area, and I find nothing to dispute this. The Council has also not raised concerns about the impact on neighbouring residents, trees or highways, subject to conditions. However, even if I was to accept that there would be no visual harm to the area, good design and avoiding harm in respect

- of other matters should be an expectation of all development. These are neutral factors in this case.
30. The appeal site, while outside of the settlement boundary, is adjacent to this rural settlement. In this regard it is well related to the existing built environment and the range of local services in the settlement. These are benefits that weigh in favour of the proposal. There are bus stops nearby, but given the rural location, future occupants of the dwelling would likely be dependent on the car, and this counters this benefit.
31. The proposal would bring a new family home to the market, and in this regard, it would contribute to the Government's objective of significantly boosting the supply of homes. This is a small windfall site such that it would likely be built quickly. The construction phase would bring some economic benefits. The future occupants of the family sized dwelling would also likely contribute to the economic and social vibrancy of the rural community. These would all amount to significant benefits of this proposal.
32. The proposal would also include mitigation for impacts on existing reptile habitats in the site. While such mitigation is generally considered a neutral factor, the proposed longevity of the management of the reptile mitigation area could be beneficial. Further to this, biodiversity enhancement measures, which include a new pond, would also be a benefit, albeit limited given the scale of the development.
33. It is understood that the Council can demonstrate a five year housing land supply in the borough. The appellants highlight that this should not be seen as a cap. There is also undoubtedly an urgent need for more housing nationally. In that context any new dwelling would likely make a significant contribution. However, accepting the moderate benefits of the proposal outlined above, even if I agreed that the harm arising from the conflict with Policy COM2 would be limited, these factors would not outweigh the identified adverse impact on the integrity of protected habitats that are unresolved in this case.
34. The provisions set out in Paragraph 11 d) of the Framework are not engaged in this case. However, even if they were engaged, the Framework states, at Paragraph 182, that the presumption in favour of sustainable development does not apply where the plans or projects are likely to have a significant effect on habitats sites, unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. I have found harm in respect of protected habitats, and the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development proposed in this case. The presumption in favour of sustainable development does not apply in this appeal.
35. My attention has been drawn to appeal decisions related to sites outside the borough. As such those proposals were subject to a different local policy context to the one relevant in this case. Those decisions attract limited weight accordingly and do not alter my findings.
36. The appellants highlight three appeal decisions² in this borough that allowed proposals even though conflict with Policy COM2 was identified. However, in all

² Refs: APP/C1760/W/17/3170081, APP/C1760/W/17/3179932 and APP/C1760/W/17/3192351

three of those cases Inspectors found that legal agreements were presented that provided certainty that the adverse impacts on the protected habitats would be mitigated. This is not the case with this proposal.

37. Attention has also been drawn to significance attached to new housing in other appeal decisions, and as already outlined I agree that this proposal would be significant in this respect. However, even if I accept the level of harm arising from the conflict with the locational policy would be limited, and that there would be significant benefits, these considerations would not outweigh the identified harm on protected habitats. For this reason, I find that the considerations in this case would not justify approving a development which would be contrary to the development plan when read as a whole.

Conclusion

38. For the reasons stated above and having regard to the development plan, the Framework and other material considerations, the appeal should be dismissed.

A J Sutton

INSPECTOR