



Appeal Decisions

Site visit made on 26 September 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2023

Appeal A Ref: APP/M1710/W/23/3317860

**Land adjacent to Highcliffe, Dunsells Lane, Ropley, Alresford, Hampshire
SO24 0BX**

- 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 Biart against the decision of East Hampshire District Council.
 - The application Ref 31260/008, dated 25 April 2022, was refused by notice dated 16 September 2022.
 - The development proposed is a new dwelling and garage with associated parking (revised scheme to that approved under planning permission 31260/006).
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Appeal B Ref: APP/M1710/W/23/3317866

**Land adjacent to Highcliffe, Dunsells Lane, Ropley, Arlesford, Hampshire
SO24 0BX**

- 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 Biart against the decision of East Hampshire District Council.
 - The application Ref 31260/010, dated 10 November 2022, was refused by notice dated 25 January 2023.
 - The development proposed is new dwelling and garage with associated parking (further revised scheme to that approved under planning permission 31260/006).
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. As set out above there are 2 appeals on this site. Each appeal has been considered on its individual merits. However, to avoid duplication, and except where indicated otherwise, I have dealt with the 2 schemes together.
4. The site is located within the zone of influence of several European designated sites (habitat sites) afforded protection under the Conservation of Habitats and Species Regulations 2017 - as amended (the Habitat Regulations). These sites include the River Itchen and Solent Maritime Special Areas of Conservation (SAC's), as well as the Chichester and Langstone Harbours, Portsmouth Harbour, Solent and Dorset Coast, and Solent and Southampton Water Special Protection Area's (SPA's). Although not forming part of the Council's refusal

reasons, it is incumbent upon me as competent authority to consider whether the proposals would be likely to have a significant effect on the integrity of the habitat sites. It is therefore necessary to consider this matter as a main issue.

5. The main parties agree that planning permission was granted for a detached dwelling on the site pursuant to application reference 31260/001, and, that this permission has been implemented, albeit not completed. It is also not in dispute that in 2021 a further planning permission was granted for a dwelling on the site (reference 31260/006). From the evidence, I have no compelling reason to doubt that both planning permissions are currently extant. However, due to the footprints of the consented dwellings overlapping, it would only be possible for one to be completed.
6. The proposals subject of the appeals are alternative schemes for a single dwelling on the site. If either of the houses subject of these appeals were to be built, the evidence indicates that it would no longer be possible to complete either of the previously consented schemes.
7. The declaration date on the application form initially provided in respect of appeal A is 10 November 2022. This is later than the decision date. The appellant has subsequently confirmed that the application was submitted on 25 April 2022, and provided a copy of a 'draft' watermarked application form. In the absence of cogent evidence to the contrary, I proceed on the basis that the proposal is that specified on the 'draft' application form, which corresponds with that on the decision notice, and that the application was made on 25 April 2022.
8. The Council has confirmed that Policy H16 of the East Hampshire District Council East Hampshire District Local Plan: Second Review – March 2006 (the local plan) no longer forms part of the development plan, and no longer applies to the development proposal subject of appeal A. I have no reason to take another view, and therefore proceed on this basis.

Main Issues

9. The main issues are;
for appeals A and B;
 - the effect of the proposed development on European sites designated under the Habitat Regulations;
 - whether or not the local development strategy indicates that the site is a suitable location for the proposed developments; and,for appeal A;
 - the effect of the development on the character and appearance of the area.

Reasons

Habitat sites – Appeals A and B

10. The site is within the catchment area of the river Itchen, and it is within the zone of influence of the river Itchen and Solent area habitat sites. These areas have differing qualifying features, including; species of breeding and non-breeding birds; species of fish; white-clawed crayfish; and the Southern damselfly. In addition; rivers with floating vegetation; watercourses of plain to montane levels; sandbanks; estuaries; coastal lagoons; mudflats; coastal

shingle; and perennial vegetation of stoney banks, are further reasons for designation of some of the habitat sites.

11. The evidence indicates that high levels of nutrients in the habitat sites are causing harm to the biodiversity within them. It also indicates that surface water run-off and foul waters generated by the use of new dwellings which drain into the river Itchen catchment have the potential to reduce water quality and increase the amount of nutrients entering the habitat sites. As such, there is a pathway of potential adverse effect from the construction and subsequent use of an additional dwelling, on the integrity of the habitat sites. Therefore, both alone and in combination with other developments and sites, the proposals are likely to have a significant effect on the internationally important features of the habitat sites.
12. In these circumstances, the Habitats Regulations require that an Appropriate Assessment is carried out in relation to the likely significant effects of the proposal on the integrity of the habitat sites. I have sought further evidence on this matter, and Natural England has been consulted as part of the appeal.
13. The conservation objectives of the various habitat sites are to ensure that their integrity be maintained or restored as appropriate; and that they contribute to achieving the favourable conservation status of qualifying features and/or the aims of the Wild Bird Directive.
14. Although there is extant permission for the construction of a dwelling on the site, no dwelling exists at present. Therefore, and while no nutrient budget calculation has been provided, I have no reason to doubt that the implementation and subsequent occupation of either of the houses subject of these appeals, would result in additional nutrients being discharged from the site than at present. This would increase the nutrient loading on, and thereby undermine the conservation objectives of, these habitat sites. I cannot therefore rule out adverse effects on the integrity of the habitat sites, without appropriate mitigation.
15. I accept that a properly located, well designed and managed package treatment plant system can reduce much of the phosphorus from effluent as it percolates through the drainage field. However, insufficient evidence has been provided regarding the proposed systems, to enable me to establish that the additional phosphorus generation would not be harmful to the conservation status of the designated sites.
16. The appellant advises that the recent installation of a new package treatment plant at Highcliffe, has resulted in a reduction in the nitrates generated from the occupation of that residential property. Even if this is the case, given that the amount of nutrients that has or would be discharged from Highcliffe and the proposed development together has not been quantified, I am unable to conclude that there would not be an overall increase.
17. I must take a precautionary approach in respect of these matters. Therefore, and because I cannot rule out harm being caused to the integrity of the habitat sites from the proposed developments, the Habitat Regulations require me to consider whether there are any alternative solutions that would have a lesser effect on the features of the habitat sites. However, no such solutions have been put before me.

18. I must also assess whether there are any imperative reasons of overriding public interest relating to human health, public safety or benefits of primary importance to the environment, which would result from the delivery of the development. Considering the merits of the case, the provision of a single open market dwelling, would not constitute such imperative reasons which would justify the developments. As such, and having regard to the Habitat Regulations, permissions must not be granted.
19. For the reasons given above, there is insufficient evidence to provide the certainty needed to rule out adverse effects on the integrity on European designated sites. Consequently, the proposal would conflict with policies CP21 and CP22 of the East Hampshire District Local Plan: Joint Core Strategy dated 2014 (the core strategy). These policies require new development to maintain, enhance and protects biodiversity, and to protect the Solent habitat sites. It would also conflict with the Habitat Regulations.

Development strategy – Appeals A and B

20. There is a range of other dwellings either directly neighbouring or close to the appeal site. Notwithstanding this, the site is outside of the settlement limits for Ropley, as defined within the development plan. As such, and in the context of the development plan, the site can be regarded as being within a countryside location.
21. Policy CP19 of the core strategy is a generally restrictive policy which seeks to protect the countryside, i.e. land outside of settlement policy boundaries, for its own sake. It directs that the only development that will be allowed in such locations is that with a genuine and proven need for a countryside location. Within the supporting text, it is indicated that the countryside needs to be protected for the sake of its intrinsic character and beauty; landscapes; heritage and wildlife; the wealth of its natural resources; and to ensure that it may be enjoyed by all.
22. Policy H14 of the local plan, indicates that in countryside locations residential development will only be permitted where it is essential to house a full-time worker in agriculture, forestry or other enterprise who must live onsite rather than in a nearby settlement. This policy also contains a range of criteria, all of which must be met, for residential development proposals in the countryside to be deemed appropriate.
23. That the proposed development would be essential to house a full-time worker in agriculture, forestry or other enterprise, has not been demonstrated. Nor has it been shown that the criteria cited within policy 14 of the local plan would be met. Furthermore, and even if there is demand from self-builders to construct a dwelling on the site, this demand does not justify the construction of a house in a countryside location.
24. While only a single dwelling is proposed to be constructed on the site, such development would to a small extent, erode the intrinsic value of the countryside in the area. However, only very limited weight is attributed to the harm to the countryside that would be so caused. This is, in part, because of the proximity of the site to other houses, meaning that the proposed development would not be experienced in isolation. It is also because the site has, and would continue to have, a high degree of enclosure, due to the retention of trees and hedgerows along the site boundaries.

25. Nonetheless, and irrespective of the sizes of the houses proposed, the local development strategy indicates that the site is not a suitable location for the proposed developments. Consequently, and in respect of this main issue, the proposals would conflict with policy CP19 of the core strategy and policy H14 of the local plan.

Character and appearance – Appeal A

26. The appeal site occupies land between a series of mainly single-storey attached dwellings at Meadow View, and a relatively substantial house at Highcliffe. Although brick exterior walls prevail within buildings close to the appeal site, there are also sections of walls that are either clad in timber or rendered. Furthermore, there is diversity in the scale, height, massing, and roof forms of nearby buildings. The variety in built form close to the appeal site is therefore a distinctive characteristic of the area.
27. A tall close boarded fence separates the appeal site from Highcliffe. This and the trees, hedgerows and plant growth around the other boundaries, greatly restrict visibility into the site from locations along Dunsells Lane; the public right of way adjacent to part of the site boundary; and the land beyond. There is no proposal to remove the boundary treatments, planting or trees. Therefore, and while glimpses of the proposed development, including the single-storey side and rear projections and rear dormer may be possible from vantages outside of the site, the dwelling would not be prominent any such views.
28. The large mono-pitched dormer feature at first floor level, in common with the main pitched roof section of the house, would be faced in clay plain tiles. From my observations on site, dormers of a similar size and design are not common within the area. However, in this case, the inclusion of the dormer feature to the rear of the dwelling would not be harmful to either the character or appearance of the resultant dwelling or the wider area. This is because of the high degree of enclosure of the site and the proposed use of external materials which would also be used elsewhere on the house.
29. The single-storey side and rear projections would be brick faced to match the rest of the dwelling. Furthermore, and although the side projection would include a flat roof section, the lower roof sections of this part of the building would match that of the main bulk of the house. Moreover, and given the frequency of single storey development within the area, some of which is flat roofed, the inclusion of these features within the proposed house, would not be harmful to local distinctiveness.
30. For the reasons given, the proposed development would not be harmful to the character and appearance of the area. Consequently, and in respect of this main issue, it would comply with policy CP29 of the core strategy and policy 11 of the Ropley Neighbourhood Plan dated September 2019. Amongst other things these policies require new development; to have a high-quality external appearance that respects the area's particular characteristics; to contribute towards local distinctiveness and be sympathetic to its setting; and to be of a scale, massing height, density and design appropriate to its context. It would also comply with the parts of chapter 12 of the National Planning Policy Framework (the Framework), which seek to ensure that development is visually attractive, sympathetic to local character and maintains a strong sense of place.

Other matters

31. Even if the site is well located in relation to local bus services, which would make it easier for family members to support future occupiers, I am unconvinced that the allowance of this appeal would be the only way to secure such benefits. The proposal would authorise the construction of a new dwelling which would contribute to the Council's housing supply. It would also deliver economic benefits both during construction and post occupation, as well as social benefits and some environmental benefits. However, given the small scale of the proposals, the weight that can be attributed to these benefits is limited.
32. Although other dwellings have been approved in the area, I have not been provided with sufficient detail in respect of the other schemes to enable comparisons to be made with the developments subject of these appeals.
33. The Council has indicated that it does not have a five-year supply of deliverable housing sites. In such circumstances, it is appropriate to consider whether the provisions of paragraph 11. d) of the Framework should be applied. 11. d) sets out that permission should be granted for proposals that constitute sustainable development unless certain circumstances apply. One such circumstance, at 11. d) i. is where the policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 of the Framework confirms that the policies referred to within 11. d) i) include those related to habitat sites. Given that I cannot rule out adverse effects on the integrity of the habitat sites, the presumption given by paragraph 11.d) would not be triggered in this case.
34. The appellant has indicated that if these appeals are dismissed, they would implement the development permitted under application reference 31260/006. I accept that there is a more than theoretical possibility that this 'fall-back' scheme would be delivered, and significant weight is attributed to the fall-back. I also appreciate that the number of houses that could be constructed on the site if these appeals were allowed, or the fall-back scheme were delivered, would be the same. However, and notwithstanding these considerations, the application of the Habitat Regulations indicate that the development proposals subject of these appeals must not be permitted.

Conclusion

35. Although I have found that the proposals would not cause harm to the character and appearance of the area, this is a neutral consideration. The Habitat Regulations confirm that I cannot approve a proposal where likely significant effects cannot be ruled out. This matter is of overriding concern and provides a clear reason for refusing to grant planning permission for the developments.
36. The proposal conflicts with the development plan when taken as a whole, and there are no material considerations, either individually or in combination that outweigh the identified harm and associated development plan conflict.
37. I therefore conclude that both appeals A and appeal B should be dismissed.

V Simpson INSPECTOR