



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: 14 December 2023.

Appeal Ref: APP/P2114/W/22/3310798

Rose Cottage, Stag Lane, Newport PO30 5TR

- 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 Alan Stay & Janet Grist, executors of Mrs Olive Beatrice Stay (deceased) against the decision of Isle of Wight Council.
 - The application Ref 20/02139/FUL, dated 4 December 2020, was refused by notice dated 30 June 2022.
 - The development is a proposed detached dwelling and attached garage; alterations to vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for a proposed detached dwelling and attached garage; alterations to vehicular access at Rose Cottage, Stag Lane, Newport PO30 5TR in accordance with the terms of the application, Ref 20/02139/FUL, dated 4 December 2020, subject to the schedule of conditions attached at the end of the decision.

Preliminary Matters

2. The appellant has provided a Unilateral Undertaking dated 9 May 2022 (first UU) which would make financial contributions towards Habitat Mitigation and affordable housing. A further Unilateral Undertaking dated 6 April 2023 (second UU) has also been submitted to make an uplift to the financial contribution towards Habitat Mitigation specified in the first UU. These are considered later in my decision.

Main Issues

3. Taking into account the reasons for refusal and the contributions contained in the first and second UU's, the main issues with this appeal are:
 - Whether the site is suitably located for new housing development, having regard to local and national planning policies and its accessibility;
 - Whether the financial contribution towards affordable housing is reasonable and necessary to make the development acceptable;
 - The effect of the proposal on the Solent and Southampton Water Special Protection Area (SPA); and,
 - Whether there are any other material considerations that would outweigh any conflict with the development plan.

Reasons

Suitability of site

4. The appeal site is largely laid to grass, it adjoins Rose Cottage and is located part-way along Stag Lane, which connects Cowes Road (A3020) to the Newport-Cowes cycle path. Although there are scattered homes and businesses along Stag Lane adjoining and near to the appeal site, its location is isolated from the nearest settlement of Newport. As such, it is situated outside of Newport's settlement limit, it is also separated from Newport by agricultural land, as such it lies within the countryside. Newport is a large settlement, which I saw had a wide range of services, facilities, and employment opportunities. The appeal site is also within the Medina Regeneration Area, which is a key focus for new development on the Isle of Wight
5. Policy SP1 of the IP states that new residential development outside of, or not immediately to defined settlements will not be supported, unless there is a local need.
6. Within walking distance of the appeal site there is the Stag public house and restaurant, along with some employment uses along and at the end of Stag Lane near to the cycle track. Furthermore, I also saw that the appeal site's proximity to services and facilities is not dissimilar to some other nearby properties along both Stag Lane and within the built-up part of Cowes Road.
7. Nevertheless, given the appeal site's separation from Newport, the occupiers of the proposed dwelling are more likely to undertake journeys by car, than if they were more centrally located. Notwithstanding this, the appeal site is connected by a wide public footpath, which includes a shared surface, to both Cowes Road and the nearby cycle path. Although the footpath has an incline on its approach to Cowes Road, the shared surface would still be useable and accessible by pedestrians and cyclists, to travel this short distance. In addition, the nearest bus stops are located on either side of Cowes Road near to its junction with Stag Lane and are within an accessible walking distance of the appeal site. I also observed that the bus service from those nearest bus stops would provide regular connectivity to Newport, Cowes, and beyond.
8. Furthermore, I also saw that the Newport-Cowes cycle path is located a short distance away from the appeal site and provides cycle access to either settlement, which would broaden the transport options for occupiers of the proposed dwellings. Consequently, I find that the appeal site would have access to a good range of sustainable transport options to access nearby facilities and services, including employment opportunities.
9. In conclusion, the site does have good accessibility to local services and facilities with modes of transport other than the car. However, the location of the proposed development is not within or adjacent to the settlement limits of Cowes. As such, the proposal would be contrary to the requirements of Policy SP1 of the IP, which seeks to ensure new dwellings are located within or immediately adjoining existing settlements.
10. Although the proposed dwelling would be very near to existing houses and businesses and that its occupiers could contribute towards the vitality of the town of Newport, it would not be located within Newport itself. As a result, there would also be a conflict with paragraph 80 of the Framework, insofar as

they seek to prevent isolated new homes in the countryside that are away from settlements.

Affordable Housing Contribution

11. The first UU would make a financial contribution towards affordable housing provision on the Isle of Wight, calculated at 3% of the market value of the completed dwelling and paid prior to the occupation of the proposed dwelling. The financial contribution would be used for the alteration or improvement of affordable housing. The Council has advised they are satisfied that the first UU secures the affordable housing contribution. Notwithstanding this, it is necessary for me to consider this obligation against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regs.).
12. Policy DM4 of the IP requires a financial contribution towards affordable housing provision, from new single dwellings such as this proposal. This requirement is also replicated within the Isle of Wight's Affordable Housing Contributions Supplementary Planning Document, adopted March 2017 (AHSPD). Although, I note paragraph 64 of the National Planning Policy Framework (Framework), the Planning Practice Guidance (PPG) and the Written Ministerial Statement of November 2014 (WMS), set out that the provision of affordable housing should not be sought for residential developments of the scale set out in the appeal proposal.
13. In view of the Court of Appeal judgement on this matter referred to in the AHSPD, I have had regard to the Council's rationale for seeking such contributions. In particular, the AHSPD sets out that the Isle has a chronic affordable housing need said to represent 58% of its overall housing requirement per annum, significantly higher than the 35% affordable housing contributions sought from such development. The AHSPD also states the Isle's particular affordable housing needs stems from the projected large increase in its residents over 55 years of age and the high amount of its younger adults in rented accommodation. It is also noted that the Isle's ratio of median house price to lower quartile earnings is significantly higher than the national average, making market ownership harder and further exacerbating the affordable housing need. These arguments attract very significant weight.
14. Given the above I am persuaded that there is a demonstrable affordability issue on the Isle of Wight and that contributions from small sites such as this form a key element in the overall delivery strategy of affordable homes. Policy DM4 of the IP and the relevant parts of the AHSPD, in particular require a financial contribution as outlined above, which outweigh the WMS, and the guidance within both the Framework and PPG in this case. The obligations within the first UU in this regard are reasonable and necessary to make the development acceptable and related in scale and kind to it, and they meet the tests set out in Regulation 122(2) of the CIL Regs, and paragraph 57 of the Framework, in the event the appeal were allowed. Consequently, I have taken the UU into account in coming to my decision.

Effect on the Solent and Southampton Water Special Protection Area

15. The site is located within the specified 5.6km zone of influence of the coast and water environments of the SPA, a European site designated to protect important habitat for bird species. The Conservation of Habitats and Species

Regulations 2017 (as amended) (the Habitats Regulations) requires me as the competent authority in the context of this appeal to undertake a Habitat Regulation Assessment to establish whether there are likely significant effects from the proposal, either alone or in combination with other plans or projects upon the SPA.

16. The qualifying features of this European site most likely to be affected by the proposal, include over-wintering birds, namely; *branta bernicla bernicla* (dark-bellied brent goose); *anas crecca* (eurasian teal); *charadrius hiaticula* (ringed plover); *limosa limosa islandica* (black-tailed godwit); *larus melanocephalus* (mediterranean gull); *sterna sandvicensis* (sandwich tern); *sterna dougallii* (roseate tern); *sterna hirundo* (common tern); and *sterna albifrons* (little tern).
17. This SPA has an important recreational use, and it is likely that occupants of the proposed development would visit it for recreational purposes causing disturbance to this area. In this regard, and considering the evidence before me, it is clear that the proposal, when combined with other development in the area, would likely have significant effects upon the qualifying features of the SPA. In addition, increased nitrates from foul wastewater associated with the proposed development could also have likely significant effects in combination with other development upon the SPA, if they enter the Solent as they would exacerbate eutrophication, causing an increase in some nutrients. Therefore, in the event I allow the appeal, I am required to undertake an appropriate assessment in accordance with the Habitats Regulations.

Appropriate assessment

18. The Council in consultation with Natural England (NE) has adopted the Solent Recreation Mitigation Strategy December 2017 (SRMS). The SRMS requires a financial contribution towards strategic access management and monitoring measures to control recreational activity in the SPA, including suitable alternative natural greenspace for residents to use. The Council has provided a detailed explanation of the SRMS and the basis on which the mitigation is sought. This includes justification for the respective levels of tariffs and the administrative arrangements for receipt and effective and timely use of financial contributions for these purposes.
19. NE as the Statutory Nature Conservation Body (SNCB) has been consulted on this proposal and provided a site-specific response. They require a financial payment in accordance with the SRMS to mitigate the recreational effects of the proposed development on the integrity of the SPA. They regard this approach to be ecologically sound. The Council has also confirmed that the relevant provisions of the appellant's first UU together with the second UU to make a combined payment as required by the SRMS are acceptable.
20. In terms of recreational impacts upon the SPA, I am content that the first and second UU's are necessary, directly related to the development and fair and reasonable in scale and kind. As such they accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (Regulations) and the tests within paragraph 57 of the National Planning Policy Framework (Framework) for planning obligations. As the competent authority in this appeal, I am also satisfied that with regard to recreational impacts, they would secure suitable mitigation to protect the integrity of the SPA and I will take them into account in coming to my decision.

21. Regarding the drainage of foul water, the Council has adopted the Isle of Wight Position Statement: Nitrogen neutral housing development January 2023 (PS) following input from NE. Amongst other things, the PS sets out that provided foul wastewater from residential development on the Island enters the English Channel, not the Solent, then there would be no likely adverse effect on the SPA, and no mitigation required. In this case, the proposal is for foul water to be discharged to a cess pit or tank and then taken to Sandown wastewater treatment works by tanker, which would then discharge into the English Channel.
22. If I were to allow the appeal, I would impose a condition requiring exact details of the foul water drainage to be agreed and implemented prior to the occupation of the dwelling, which would ensure there would be no likely significant effects upon the SPA in relation to foul water entering the Solent.

Conclusion

23. For the reasons set out above, and taking account of the mitigation measures proposed, if the appeal were allowed the proposal would not adversely affect the integrity of the SPA. Consequently, the proposal would comply with Policies DM2 and DM12 of the Island Plan, Isle of Wight Core Strategy (including waste and minerals) and Development Management, Development Plan Document, dated March 2012 (IP), which amongst other things, require development to protect and conserve the environment and avoid adverse effects on the integrity of designated biodiversity sites.

Other considerations

24. Although only a small contribution, the proposal would contribute towards the Isle of Wight's housing provision and Government's plan to significantly boost the supply of housing, contained in paragraph 60 of the Framework, which weighs in favour of the proposal.
25. The appeal site forms part of the side garden of the adjoining Rose Cottage. Therefore the appeal site is regarded as previously developed land, as the garden is not within a built-up area, in accordance with the definition of previously developed land stated within the Glossary contained within Annex 2 of the Framework. Paragraphs 8 c) and 119 of the Framework require an effective use of land, and the re-development of this previously developed land is a factor that weighs in favour of the proposed development.
26. There would also be economic benefits associated with the construction of the development, and there would also likely be social benefits through the contribution of future occupiers to memberships of local community groups. Again, these contributions are small due to the scale of the proposal, but nevertheless weigh in favour of the proposal.

Other Matters

27. The appellant has referred me to an appeal decision that was allowed for a dwelling at 316 Fairlee Road Newport. That site was located a similar distance from the settlement limit of Newport. It was concluded that development was contrary to Policy SP1 of the IP. However, the adverse impacts of that development did not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. In this

case, I need to consider the proposal on its merits against development plan and Framework policies.

Planning Balance

28. I have concluded that the location of the proposed dwelling conflicts with Policy SP1 of the IP. I have not found any further conflicts with development plan policy. However, I consider that is sufficient to conclude that the proposal conflicts with the development plan as a whole. Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires the proposed development to be determined in accordance with the development plan, unless material considerations indicate otherwise.
29. The Council stated that their Five Year Supply Update 2018 found that they did not have a 5-year supply of housing as of 1 April 2018. The Council has also stated that in terms of the Housing Delivery Test, only 54% of its housing requirement was delivered over a three-year period up to March 2020. The Framework is a material consideration of great weight and sets out, in accordance with Footnote 8 to paragraph 11 of the Framework, that relevant policies are deemed to be out of date where the Council does not have a 5 year supply of housing, or it is not meeting its Housing Delivery Test.
30. Therefore the presumption in favour of sustainable development contained within paragraph 11 d) of the Framework is engaged, which states that planning permission should be granted unless; i, the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii, if any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
31. Taking account of the mitigation measures proposed, I have concluded that the proposal would not have a significant effect upon the integrity of the SPA. There are no other relevant Framework policies which provide a 'clear reason for refusal' within the terms of Paragraph 11 d) i, footnote 7 and paragraph 182 of the Framework.
32. Whilst Policy SP1 is more restrictive than paragraph 80 of the Framework in terms of the exceptions for isolated homes in the countryside, it is acknowledged that it is broadly consistent with the Framework in terms of requiring new housing to be located in sustainable locations and avoid isolated homes in the countryside.
33. Notwithstanding the conflict with Policy SP1 of the IP and paragraph 80 of the Framework, I found in my reasoning above the appeal site is well-connected to nearby Newport through a range of transport methods, and that it is very near to other homes and businesses. I have also set out the other benefits of the proposed dwelling above, and given my findings, weight can be attached to the off-site financial contribution towards affordable housing. These points, particularly with the site being previously developed land in this case, and the requirement of paragraph 60 of the Framework to significantly boost the supply of housing, collectively weigh in favour of the proposal.
34. In this case the adverse impacts of the location of the proposed development would not significantly and demonstrably outweigh the benefits as set out

above. Therefore, the presumption in favour of sustainable development has significant weight as an important material consideration, which I find to outweigh the identified conflict with Policy SP1 of the IP and the conflict with paragraph 80 of the Framework. This indicates to me the appeal should be allowed.

Conditions

35. A standard implementation condition has been imposed, along with a condition listing the approved plans to provide certainty over what has been approved.
36. A condition is also necessary to protect and enhance the local ecology and biodiversity on and near to the appeal site, which adheres to the recommendations and conclusions of the appellants Ecology Appraisal. To protect the health of the existing trees on and to some sides of the appeal site that contribute positively to the character and appearance of the area, a condition is imposed requiring protective fencing around their root protection areas during construction works.
37. As the exact details are not specified, conditions are also necessary to control the external finishes of the buildings and boundary treatments to ensure the proposal relates well to the character and appearance of the area.
38. A condition is necessary to ensure adequate space is provided for on-site parking and it is constructed such that loose material would not be transferred to the highway in the interests of highway safety.
39. I have imposed a foul drainage condition, which is necessary to ensure satisfactory on-site foul water drainage arrangements, and its collection and processing off site, to prevent harmful impacts on the SPA and nearby watercourses. Although the Council sought this condition as a pre-commencement condition, as explained in the Appropriate Assessment above, I was not persuaded this was reasonable, given that foul water is to drain into a sealed tank on site, which requires no third-party agreement, consequently a condition ensuring such a system is in place prior to the occupation of the dwelling is reasonable in this case. A condition is not necessary for surface water drainage details, as the application form makes it clear that this is to be sustainably drained via soakaways, and I have no evidence to indicate that there would be any problems associated with this approach or that the site is within an area with known surface water drainage issues.
40. In view of the aforementioned boundary treatment and ecology conditions, I did not find the Council's recommended landscaping condition was necessary to secure further planting to protect the character and appearance of the area, particularly in view of the proposal's location next to Rose Cottage, and the existing planting nearby.

Conclusion

41. For the reasons given, I conclude that the appeal should be allowed.

A Hunter

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans; drawing no. 0241 002 Revision B; drawing no. 0241 003 Revision A; drawing no. 0241 004 Revision B; drawing no. 0241 005; drawing no. 0241 006; drawing no. 0241 007 Revision A; and drawing no. AS/JG/0720 TSCP.
- 3) Development, including site clearance, shall not begin until precise details of ecological mitigations and enhancements in accordance with the conclusions and recommendations contained within the submitted Ecological Appraisal, dated 3rd August 2020 together with a timetable for their implementation, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.
- 4) No site preparation or clearance shall begin, and no equipment, machinery or materials shall be brought onto the site for the purposes of the development hereby permitted, until details of measures for the protection of existing trees as shown on drawing no. AS/JG/0720 TSCP (Tree Survey and Constraints Plan) have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include a plan showing the location of existing trees to be retained and the positions of protective fencing. Development shall be carried out in accordance with the approved details and the 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.
- 5) Construction of the dwelling hereby permitted shall not proceed above foundation level until details of the materials and finishes to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) Precise details of the boundary treatments shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development, together with a timetable for its implementation. The development shall be undertaken in accordance with the approved details.
- 7) The dwelling hereby permitted shall not be occupied until parking areas shown on drawing number 0241 007 Revision A have been laid out and constructed within the site and are available for use. These areas shall thereafter be retained for their intended use and not used for any other purpose.
- 8) Foul water from the dwelling hereby permitted shall only be drained to an on-site sealed tank (cess pit). When emptied, the contents of the on-site sealed tank shall be taken to, and treated at the Southern Water Wastewater

Treatment Works at Sandown, in accordance with precise details, including maintenance measures, that shall first have been submitted to and approved in writing by the Local Planning Authority and fully implemented prior to the occupation of the dwelling. The development shall be carried out in accordance with the approved scheme and maintained as such thereafter.