



Appeal Decision

Site visit made on 6 September 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2024

Appeal Ref: APP/A1720/W/22/3309695

Land to rear of 50-52 Paxton Road, Fareham PO14 1AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr George Bell against the decision of Fareham Borough Council.
- The application Ref P/22/0295/OA, dated 28 February 2022, was refused by notice dated 28 April 2022.
- The development proposed is a 1 x 3 bedroom dwelling.

Decision

1. The appeal is allowed, and planning permission is granted for a 1 x 3 bedroom dwelling at Land to rear of 50-52 Paxton Road, Fareham PO14 1AD in accordance with the terms of the application, Ref P/22/0295/OA, dated 28 February 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The application was submitted in outline form with all matters reserved for future approval. I have determined the appeal on this basis, treating the submitted plans and details as illustrative. My description of development is taken from the application form, excluding words that are not acts of development.
3. The Fareham Local Plan 2037, April 2023 (FLP) was adopted after the appeal was submitted. The FLP replaces the Fareham Local Development Framework Core Strategy 2011 and the Fareham Local Plan Part 2: Development Sites and Policies 2015 and therefore the policies quoted on the decision notice are no longer relevant. The main parties have provided comments on this matter, and I am satisfied that no party has been prejudiced in this regard. I have therefore determined the appeal on the basis of the FLP.
4. A revised Nutrient Budget Calculation (NBC) and Biodiversity Enhancement Plan (BEP) were submitted with the appeal. Late evidence regarding Biodiversity Net Gain (BNG) was submitted during the appeal. Having regard to the interest of fairness and principles outlined in case law¹, I consider that these documents do not result in a substantial or fundamental change to the proposal. The Council considered the NBC and BEP in its submissions and accepted the late evidence, and no party has been prejudiced by my acceptance of them. I have therefore considered these documents in determining the appeal.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]; Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin).

5. The National Planning Policy Framework (the Framework) was revised on 19 December 2023, with a further revision on 20 December. Those parts of the Framework most pertinent to the appeal have not been significantly amended. As a result, I consider that it is not necessary for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

Main Issues

6. The Council's reasons for refusal did not refer to the issue of BNG. However, following the adoption of the FLP, this issue is now relevant to the appeal. Therefore, the main issues are:
- the effect of the proposal upon the character and appearance of the area;
 - whether the proposal would deliver at least 10% BNG; and
 - the effect of the proposal upon European Protected Habitats Sites.

Reasons

Character and appearance

7. The appeal site is within a residential area and forms a backland site with a driveway between Nos 50 and 52 Paxton Road. The Fareham Borough Design Guidance Supplementary Planning Document (excluding Welbourne) 2015 (SPD) seeks to ensure that new plots arising from garden or backland sites are similar in size to nearby properties, and that they are proportionate to the plot. The SPD also sets out that development should respond positively to and respect the key characteristics of the area, including scale, form and spaciousness.
8. The area is characterised by dwellings of varying scale, age and design, including terraced, semi-detached and detached forms. Plot sizes also vary, but the predominant character of the wider area is of long narrow plots and two storey forms, resulting in a spacious character to the rear of built forms.
9. The illustrative layout and details propose a chalet style single storey dwelling, positioned centrally within the plot, with a double garage positioned forward of the principal elevation, two further at grade car parking spaces, turning space and a rear garden. Although illustrative, I can have a fair degree of confidence that this would be the location and layout of the final scheme, given the relatively limited options for layouts on the site. The detail, including that the dwelling be a chalet style dwelling, could be controlled by future reserved matters submissions and condition discharge applications.
10. There is no dispute between the main parties that the illustrative scheme would meet all required standards and/or separation distances as set out in the SPD, and I find no reason to consider otherwise. Consequently, I am satisfied that the illustrative layout demonstrates that a chalet style dwelling would satisfy the SPD's requirements and ensure that the amenities of neighbouring and future occupiers would be acceptable.
11. Nos 48 and 50 Paxton Road are single storey semi-detached bungalows, with No 48 located to the corner of Avenue Road. The appeal site also abuts a two-storey detached property at No 3 Avenue Road, which is sited close to the boundary of the appeal site, with a private amenity space to its side elevation. These three adjacent plots (the three adjacent plots) are of a wider and

shallower depth than the prevailing character. No 52 Paxton Road is located adjacent to the existing driveway to the appeal site and is a narrow plot, with a shallower plot depth than the prevailing character. Therefore, these plots demonstrate a degree of discordance to the wider character.

12. The proposed dwelling would be sufficiently similar in scale and form to that at Nos 48 and 50. Although its plot size would be relatively larger than the three adjacent plots, and of a squarer shape, the degree of variance would be limited. A reasonable degree of spaciousness would remain.
13. The illustrative layout shows the proposed dwelling in alignment with the side elevation of No 3. The view from Avenue Road towards the proposed dwelling would include the intervening conservatory to No 3. As a single storey form, the proposed dwelling would be of an acceptable scale and mass in this context and would not, therefore, unacceptably harm the spacious character of the immediate or wider area.
14. My attention has been drawn to two nearby development schemes now completed, forming Nos 2, 2a, 2b, 4, and 6 The Avenue. They are not directly comparable as these properties are two storey dwellings with full frontages to the street. Nevertheless, they demonstrate the acceptability of less regular plot shapes and sizes in the immediate vicinity.
15. Having regard to all of the above, I find that the proposal would be in a plot of a sufficient size and that the dwelling would be proportionate to its plot and it would not appear cramped. The proposal would also be in keeping with the character of the wider area. In reaching this view, I have taken account of the previously dismissed appeal scheme at the same site (Ref APP/A1720/W/20/3262221), where the Inspector found that a proposal for two chalet-style dwellings would result in much smaller plots with a higher density than the prevailing character; that there would be little scope for planting within the layout, and therefore it would have a cramped appearance. The illustrative scheme before me is for a single dwelling within a larger plot, with sufficient scope for planting and therefore this matter has been overcome.
16. I therefore conclude that the proposal would not unacceptably harm the character and appearance of the area. The proposed development therefore accords with Policy D1 of the FLP, which seeks to ensure high quality development that responds positively to local character.

Biodiversity Net Gain

17. Policy NE2 of the FLP seeks to ensure that development of one or more dwellings should provide at least 10% BNG from the existing baseline value of the site and that the BNG should be maintained for a minimum of 30 years.
18. The BEP submitted with the appeal is dated August 2022, and was prepared before the adoption of the FLP, when the operative policies of the development plan sought an unquantified BNG. The BEP demonstrates a scrub habitat, dominated by bare ground to include a spoil mound. Enhancement provisions are proposed on site to include planting with native species, the creation of a grassland habitat and the provision of bat & bird boxes. The responsibility for a five-year maintenance plan would lie with future landowner(s), with a monitoring regime. The overall conclusion is that the proposal would deliver a net gain. However, the gain is unquantified.

19. Having regard to the BEP and my own observations, the site is likely to have a low ecological value. The proposed development would likely be capable of delivering at least a 10% BNG, delivered through on-site measures and, if it were to be demonstrated that it would not be adequately accommodated on site, through off site measures. The illustrative layout demonstrates that there is a large amount of rear garden land with a further smaller area of landscaping to the frontage, and this could provide opportunities for on-site provision. As a single dwelling is proposed, it is likely that any measures secured could be maintained by the future landowner(s) for 30 years. I am therefore satisfied that the objectives of Policy NE2 could be achieved, subject to a suitable pre-commencement condition.
20. I therefore conclude that subject to a suitable condition, the proposed development would deliver at least 10% BNG. The proposal therefore accords with Policy NE2 of the FLP, which seeks to halt the loss of biodiversity and provide net gains across the borough.

European Protected Habitats Sites (the Habitats Sites)

21. The Conservation of Habitat and Species Regulations 2017 (as amended) (the Regulations) require that where a project is likely to have a significant effect on a European site², either alone or in combination with other projects, the competent authority must make an Appropriate Assessment of the project's implications in view of the relevant conservation objectives.
22. I have consulted with Natural England (NE) in this regard. NE advise that the appeal site is within 5.6km of the designated 'Solent Sites', namely the Southampton Water Special Protection Area (SPA) and Ramsar site; the Solent Maritime Special Area of Conservation (SAC); and the Solent & Isle of Wight SAC. It is also within the 13.8km buffer zone of the New Forest SPA, SAC and Ramsar site; and the New Forest Site of Special Scientific Interest (SSSI) (the New Forest Sites).
23. The Solent Sites are protected for their international importance for birds, especially the winter hosting of waders and wildfowl, and for the habitats which support these and other fauna and flora of great importance. The New Forest Sites are protected for the importance of their wildlife and habitats, including wet and dry heathlands and rare and endangered birds such as the Nightjar and Dartford Warbler.
24. The Solent Sites are at risk from excessive nutrients arising from wastewater discharge. Both the Solent Sites and the New Forest Sites are at risk from recreational disturbance from an increase in the local population. The proposal would result in one dwelling with one household. As such, the number of additional recreational visitors and impact upon water quality would be limited. However, in combination with other developments it is likely that the proposal would have significant effects on the Habitats Sites. Therefore, as the competent authority, I am required to undertake an Appropriate Assessment.
25. As part of partnerships which include NE and local councils, mitigation strategies have been prepared to address the potential harmful effects from additional recreational disturbance, and developers are required to make financial contributions to the delivery of those strategies.

² As defined at Regulation 8 of The Conservation of Habitats and Species Regulations 2017 (as amended).

26. The appellant has made financial payments to the Solent Disturbance project (now known as the Solent Recreational Mitigation Partnership) and to an Interim Mitigation Solution (New Forest Recreational Disturbance Mitigation). Both the Council and NE raise no objection in regard to the mitigation for recreational disturbance and I find no reason to consider otherwise.
27. In regard to water quality, NE advises that developers are required to demonstrate nutrient neutrality. Furthermore, NE advises that developers are unlikely to be able to prevent increased levels of nitrates entering the Solent due to wastewater from new dwellings through on-site mitigation.
28. A scheme has been established with third party providers to enable nitrate mitigation via an interception wetland within the catchment of the Solent at Whitewool Farm within the South Downs National Park. The Council has entered into a legal agreement with the owner and tenant of Whitewool Farm and South Downs National Park Authority to secure this off-site mitigation for development within their administrative area. The purchase of sufficient credits by a developer to meet the nitrate mitigation capacity of a development enables nutrient neutrality to be demonstrated.
29. The revised NBC submitted to the appeal demonstrates that the proposal would generate an annual nutrient budget of 0.8kg TN/year. The NBC is acceptable to NE and the Council, and I find no reason to consider otherwise. Subject to the site area being correct and that the existing land uses are appropriately precautionary, NE raise no concerns and I am satisfied in this regard.
30. The appellant has entered into a deed of allocation to reserve the necessary credits at Whitewool Farm. It has been confirmed by letter that the expiry date is 31 March 2024. I am satisfied that the developer is legally bound to confirm the required credits and to pay the commuted sum within a reasonable timeframe following the grant of permission. I am also satisfied that the developer is legally bound not to implement the development until the commuted sum is paid. However, the Council is not party to the deed and seeks a pre-commencement condition to confirm that the required credits have been allocated to the scheme at Whitewool Farm if I were to allow the appeal. The appellant raises no objection in this regard.
31. In concluding my Appropriate Assessment, I am satisfied (subject to the condition) that there would be no adverse effect on the integrity of the protected sites from recreational disturbance or excessive nitrates when considered alone or in combination with other development. The proposal complies with the Regulations and there are no other unacceptable environmental effects.
32. The proposal therefore accords with Policies NE1, NE3 and NE4 of the FLP. Taken together, these policies seek to protect priority species and where appropriate enhance protected habitats; and to ensure that development appropriately mitigates impacts upon Habitats Sites.

Other Matters

33. A number of objections have been received. I have considered many of the issues raised above. In addition, the objections include concerns that access via the existing driveway would generate noise and disturbance and harm the privacy of neighbouring occupiers. The entrance of No 52 faces the existing

driveway, and this elevation includes two ground floor windows serving a dining room and kitchen about 1.5m from the driveway. The SPD requires sufficient distance to be left between new driveways and windows to living areas in adjacent properties. There is no evidence before me that the occupation of a single dwelling would lead to excessive vehicle movements, or continuous movements throughout the day. Access is a reserved matter and suitable boundary treatments and landscaping features, including hard surfacing materials can be controlled at reserved matters stage to minimise such impacts.

34. Concerns are also raised that an existing street column to the footway near the existing driveway might impede safe access to the site, or if it were to be removed, could result in harm to highway safety. However, access is a reserved matter; there is no objection before me from the local highway authority in this regard; and there is no evidence before me to demonstrate that another column could not be located within reasonable proximity.
35. In addition, there is no evidence of any parking stress before me, and I am satisfied that parking requirements for the proposal can be accommodated within the site. Furthermore, there is no evidence to demonstrate that emergency vehicles would be unable to service the proposed dwelling, and I find no reason to consider otherwise.
36. My attention is drawn to the concerns of neighbouring occupiers that the open nature of the site and neglected boundaries may have led to crime. The proposed development would provide greater natural surveillance over the area. As a result, the opportunities for crime and anti-social behaviour would be likely to reduce.
37. The illustrative layout demonstrates that a single storey dwelling can be accommodated on the site with sufficient separation distances to neighbouring properties to ensure that it would not unacceptably harm privacy or levels of daylight and sunlight to neighbouring occupiers. Noise and disturbance would arise during the construction phase, but these impacts would be temporary in nature, and a condition could address such matters.
38. Further concerns are raised that the appeal scheme would set a precedent for backland development. However, no specific examples have been put before me of sites where similar development could be brought forward and any future proposal would need to be considered on its own merits. Therefore, the appeal scheme would not set a precedent.
39. Concerns are raised about rights of access for parking within the appeal site by neighbouring occupiers and that other development projects in the area have resulted in structural defects to neighbouring properties. These are private/civil matters and have no bearing on my consideration of the planning merits of the scheme. The planning system does not exist to protect private interests such as the value of property. Matters pertaining to the conduct or character of any person is not relevant to the planning merits of the appeal.

Conditions

40. I have considered the conditions suggested by the Council, and comments from the appellant. For clarity, precision and to ensure compliance with the Planning

Practice Guidance, I have undertaken some amendments, editing and rationalisation.

41. The application is made in outline with all matters reserved, and it is therefore necessary to attach the standard conditions identifying the approved plans and requiring applications for the approval of reserved matters and the commencement of the development within the relevant timeframes.
42. Condition 5 is necessary to ensure that the development delivers at least 10% BNG. Condition 6 is necessary, reasonable and justified to ensure that the required credits for nitrate mitigation have been allocated to the scheme at Whitewool Farm, in the interests of preventing adverse impacts to the Solent Sites. Condition 7 is reasonable and necessary to ensure that a construction management plan is in place prior to commencement to protect the living conditions of neighbouring occupiers, to ensure highway safety and in the interests of amenity and environmental protection.
43. Conditions 5, 6 and 7 are necessarily worded as pre-commencement conditions, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measure which could be used.
44. Conditions 8 and 9 respectively require the approval of a landscaping scheme, externally facing materials and hardstanding materials. These conditions are necessary to ensure a satisfactory appearance to the development, and in the interests of the character and appearance of the area. Condition 8 is also necessary to ensure that soft landscaping becomes established. Condition 9 is also necessary to prevent excessive noise and disturbance to neighbouring occupiers that may arise from vehicle movements.
45. Conditions requiring the approval of details for cycle storage and electric vehicle charging points are reasonable and necessary to encourage more sustainable modes of transport, to improve air quality and in the interests of tackling climate change. I have imposed Condition 12 to ensure that car parking spaces are provided prior to occupation of the development, in the interests of highway safety.
46. Condition 13 requires the approval of boundary treatments, and Condition 14 seeks to ensure arrangements are in place for the storage and collection of refuse and recycling. These conditions are reasonable and necessary and imposed in the interests of the appearance of the development and the character and appearance of the area. Condition 13 is also imposed in the interests of protecting the living conditions of neighbouring occupiers.
47. It is clear that the appeal site is capable of accommodating a dwelling of a limited scale and footprint. It is therefore necessary and justified to impose a condition restricting permitted development rights in the interests of the character and appearance of the area and the living conditions of neighbouring occupiers; and also to ensure that BNG is secured in the long term.

Conclusion

48. For the reasons given, I conclude that the development accords with the development plan, read as a whole. No material considerations have been shown to carry sufficient weight to warrant a decision otherwise than in accordance with the development plan, and therefore the appeal is allowed and planning permission is granted, subject to the conditions I have set out.

J Moore

INSPECTOR

SCHEDULE OF CONDITIONS - APP/A1720/W/22/3309695

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Plan No. EW/241/2022.02.28 LP - Location/Nitrates Land Use Plan.
- 5) The development hereby permitted shall not commence (including site clearance and ground preparations) until a Biodiversity Gain Plan (BGP), setting out the measures that will provide net gains for biodiversity of at least 10% has first been submitted to and approved in writing by the local planning authority. The BGP shall:
 - a) Quantify the pre and post development biodiversity value of the site using either the DEFRA biodiversity metric or if appropriate the Small Sites Biodiversity Metric with an explanation of the condition scores set out in the DEFRA guidance. Plans of the site (and of any areas on which off-site mitigation is proposed) must be provided together with Excel copies of the completed relevant metrics to demonstrate how the metric conclusions were reached.
 - b) Identify how a gain of at least 10% Biodiversity Net Gain can be achieved ensuring that the proposed habitat is provided onsite in the first instance followed by either a combination of onsite and partial offsite or completely offsite and that the proposed habitat is on a 'like for like' basis and avoids the 'trading down' e.g., replacing rare habitat with much more common habitat.
 - c) Demonstrate that proposals have followed the 'mitigation hierarchy': avoiding habitat loss where possible; minimising the extent of negative impacts that can't be avoided; restoring degraded ecosystems where negative impacts cannot be avoided or minimised; compensating for any residual negative impacts and ensuring at least 10% net gain.
 - d) Demonstrate that proposals maximise the connectivity of the proposed habitat with habitat in the wider area to avoid fragmented or isolated habitat.
 - e) Confirm how the proposed Biodiversity Net Gain habitats will be implemented, managed, maintained, monitored and funded for a minimum of 30-years.

The development shall be carried out in accordance with the approved BGP. The biodiversity net gain measures in the approved BGP shall be provided prior to the occupation of the development hereby permitted.

- 6) The development hereby permitted shall not commence until confirmation that the required nitrate mitigation capacity has been duly allocated to the development pursuant to the deed dated 24th October 2022 between (1) William Northcroft Butler and James Nicholas Butler, (2) H N Butler Farms Ltd and (3) George Steven Bell has been submitted to and approved in writing by the local planning authority.
- 7) The development hereby permitted shall not commence (including site clearance, vegetation clearance and boundary treatment works) until a Construction Management Plan (CMP) shall have been submitted to and approved in writing by the local planning authority. The CMP shall include details of the following relevant measures:
- a) Hours of construction and deliveries.
 - b) Facilities for the loading, unloading and storage of plant and materials.
 - c) Swept paths for manoeuvring and turning of large vehicles inside the site and to leave the site in forward gear.
 - d) Details of the precautions to guard against the excessive deposit of mud, dust, and other substances on the public highway.
 - e) Details regarding dust and noise mitigation.

Construction works shall take place only between 0800 and 1800 hours Mondays-Fridays, 0800 and 1300 hours on Saturdays, and shall not take place at any time on Sundays or on Bank Holidays or Public Holidays.

There shall be no burning undertaken on site at any time.

The approved CMP shall be adhered to throughout the construction period for the development.

- 8) No development hereby permitted shall proceed beyond damp course level until a landscaping scheme has been submitted to and approved in writing by the local planning authority.

The landscaping scheme shall include details of species, planting sizes, planting distances, density, numbers, surfacing materials and provisions for future maintenance of all new planting, including all areas to be grass seeded and/or turfed, and hard surfaced.

The approved soft landscaping details shall be carried out in the first planting and seeding seasons following the occupation of the development or the completion of the development, whichever is the sooner.

Any trees, shrubs, hedging or plants which, within a period of 5 years from first planting are removed, die, or in the opinion of the local planning authority become seriously damaged, diseased or defective shall be replaced in the next available planting season with others of the same species, size and number as originally approved.

The approved hard landscaping details shall be fully implemented prior to the occupation of the development and retained thereafter.

- 9) No development hereby permitted shall proceed beyond damp course level until details of all externally facing materials and hardstanding materials (including samples where requested) 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.

- 10) No development hereby permitted shall proceed beyond damp course level until details for secure cycle storage have been submitted to and approved in writing by the local planning authority.

The development hereby permitted shall not be occupied until the secure cycle storage has been provided in accordance with the approved details and shall be retained thereafter and kept available for cycles at all times.

- 11) No development hereby permitted shall proceed beyond damp proof course level until details of how and where electric vehicle charging point(s) to serve the development have been submitted to and approved in writing by the local planning authority. The details shall meet the following standard: at least one 'rapid charge' electric vehicle charging point per dwelling with allocated parking provision per dwelling.

The development hereby permitted shall not be occupied until the approved details have been fully implemented and shall be retained thereafter.

- 12) No development hereby permitted shall be occupied until the car parking spaces and/or turning areas have been constructed in accordance with the approved details and made available for use. The car parking spaces and/or turning areas shall be retained thereafter and kept available for the parking and turning of vehicles at all times.

- 13) No development hereby permitted shall be occupied until a plan of the position, design, materials and type of boundary treatments to be erected to all boundaries has been submitted to and approved in writing by the local planning authority and the approved boundary treatment has been fully implemented. The approved boundary treatments shall be retained thereafter.

- 14) No development hereby permitted shall be occupied until details for the storage and collection of refuse and recycling has been submitted to and approved in writing by the local planning authority. The details shall include the siting, design and materials to be used in the construction of a bin store, and arrangements for collection. The development hereby approved shall not be occupied until the bin store has been fully constructed in accordance with the approved details. The bin store shall be retained thereafter and kept available for the storage of bins at all times.

- 15) Notwithstanding the provisions of Classes A, B, C, D, E, F and G of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, no additions or alterations to the roof, porches, outbuildings or additional hard surfaced areas shall be constructed within the curtilage of the dwelling hereby permitted other than those expressly authorised by this permission.

END OF SCHEDULE