



Appeal Decision

Site visit made on 7 February 2024

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/P2114/W/23/3323899

Westmeath, Winford Road, Newchurch, Sandown, Isle of Wight PO36 0NE

- 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 Adam Groves against the decision of Isle of Wight Council.
 - The application Ref 22/01548/FUL, dated 9 August 2022, was refused by notice dated 12 December 2022.
 - The development proposed is erection of three detached chalet bungalows and service road.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. During the course of the appeal an updated version of The National Planning Policy Framework (the Framework) was published. In light of this, both parties were given the opportunity to comment on any implications for the appeal. I have taken the responses into account.

Main Issues

3. The main issues are:
 - whether the appeal site is an appropriate location for housing, with particular regard to the local development strategy,
 - the effect of the proposal on any ecological features and protected species on the site,
 - whether the proposal makes adequate provision for affordable housing,
 - the effect of the proposal on nationally and internationally protected sites, with particular regard to increased recreational disturbance and nitrate enrichment.

Reasons

Whether appropriate location

4. Policy SP1 of the Island Plan Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document (March 2012) (IP) sets out the spatial strategy for the Island set around a settlement hierarchy partly developed through a sustainability matrix. The policy states that unless a specific local need is identified, development proposals outside of,

or not immediately adjacent to settlements defined in the policy will not be supported.

5. The appeal property is located close to the edge of Newchurch. Newchurch is not identified under IP Policy SP1 as a defined settlement. As a result, the location of the appeal site conflicts with the Council's current adopted spatial strategy. I will address the matter of housing land supply below.
6. Newchurch benefits from some limited services and facilities including a pub, church, and primary school. However, there is very little public transport serving the area and walking or cycling to these services and facilities would necessitate the use of a fairly busy road with limited designated footways and limited street lighting, notwithstanding the footway proposed to part of the site frontage.
7. In light of the limited services and facilities in Newchurch, limited public transport, footways and lighting and given that access to a wider range of further services and facilities would require longer journeys via narrow unlit roads without footways, the appeal site is not in an accessible location served by a range of transport modes. As a result, occupiers of the dwellings would be reliant upon the use of the car.
8. I have had regard to the availability of mains services immediately adjacent to the site on Winford Road and to large areas of the Island not being served by public transport. However, these matters do not overcome the location of the site being reliant upon the use of the car to access a range of services and facilities including shops, places of work, places for recreation and leisure and health centres.
9. In conclusion, the appeal site is not an appropriate location for housing, with particular regard to the local development strategy. As such, the proposal is contrary to Policy SP1 of the IP and the National Planning Policy Framework (the Framework) that promotes sustainable transport and opportunities for walking, cycling and public transport use.

Ecological features and protected species on the site

10. The appeal is accompanied by a Preliminary Ecological Appraisal (September 2022). The report recommends that further species-specific surveys are required for reptiles and bats in the form of a single bat transect and reptile survey. The report recommends that the further surveys are carried out due to the presence of suitable vegetation on the appeal site for foraging, commuting, and roosting for various bat species and due to the presence of suitable reptile habitat. I have no evidence before me to confirm that additional surveys were carried out.
11. In the absence of the surveys recommended by the appellant's ecologist, and in the light of the strict protection afforded to bats and some reptile species, it is not possible for me to determine with any certainty any impact on bats and reptiles. Therefore, the potential for protected species being present or adversely affected by the development cannot be ruled out.
12. In the absence of appropriate additional surveys, the imposition of conditions to require mitigation, including details of the native planting as recommended in the Preliminary Ecological Report, would not be appropriate as there can be no certainty that the mitigation or planting would acceptably address any

harm. As it has not been adequately shown that there would be no harm in relation to this issue, then all surveys necessary should be undertaken before any planning permissions are granted.

13. For the reasons outlined above, I cannot rule out potentially significant harm to ecological features and protected species on the site. As such, the proposal would not accord with the provisions of Policies SP5, DM2 and DM12 of the IP. These seek, amongst other things, for development proposals to conserve and enhance the Island's natural environments, contribute to environmental conservation and enhancement, conserve and enhance the existing environment and support proposals that conserve, enhance and promote the biodiversity interest of the Island. The proposal would also be contrary to paragraph 186 of the Framework which advises that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Affordable housing

14. IP Policy DM4 seeks to deliver affordable homes to meet an identified housing need on the Island. The Island Plan Affordable Housing Contributions Supplementary Planning Document (March 2017) (SPD) sets out how affordable housing will be provided. It establishes that Policy DM4 applies to development that would result in a net gain of one or more dwellings. The SPD indicates that for proposals of 1-14 net additional dwellings, provision may be by way of a financial contribution to enable the delivery of affordable housing.
15. There is no dispute between the parties regarding the need to provide a financial contribution towards affordable housing in accordance with IP Policy DM4 and the SPD. Given the policy requirement and identified shortage, I am satisfied that the need for a contribution arises from the development and satisfies the three tests in Regulation 122(2) of the CIL Regulations 2010 and paragraph 57 of the Framework.
16. However, no mechanism to secure the contribution has been put in place. I therefore find that the proposal would not make adequate provision for affordable housing. As such, it conflicts with IP Policy DM4 and the SPD and would fail to contribute to the council's responsibilities in terms of providing affordable homes.

Nationally and internationally protected sites.

17. The appeal site is within the 5.6km Zone of Influence (ZOI) of the Solent Special Protection Areas (SPA) which are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). The SPA comprises the Solent and Southampton Water, Portsmouth Harbour and Chichester and Langstone Harbours Special Protection Areas.
18. Habitats Regulation 63(1) states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. I have sought to apply that requirement reasonably and proportionately relative to the nature and context of the development proposed.

19. The SPA is designated in order to safeguard ecology and the habitat within the area upon which various species are reliant. In particular, the SPA is designated in order to protect over-wintering migratory birds including waders and wildfowl. The conservation objectives seek to maintain or restore integrity, including that of the qualifying features.

Recreational disturbance

20. Visits by the intended occupiers of the proposal to the SPA for personal recreation may lead to disturbance to the habitat of ground nesting birds, overwintering waders and wildfowl which contribute to the designation of the area as a nature conservation site.
21. The Council's strategy for achieving mitigation of increased recreational pressure on the SPA is set out within the Bird Aware Solent Recreation Mitigation Strategy (December 2017) (SRMS). The mitigation in the SRMS comprises funding for provision of sites of new/enhanced green space, provision of site access management, educational measures, and monitoring. The SRMS indicates that funding will be via financial contributions and has been arrived at in conjunction with a number of partners including Natural England, the appropriate nature conservation body under Regulation 63(3). Consequently, subject to an appropriate financial contribution being made, I am satisfied that likely significant effects to the ecological integrity of the SPA would be avoided.
22. However, although I note agreement from the appellant to make the necessary contribution, no mechanism to secure it has been put in place. In the absence of a suitable mechanism to secure the necessary financial contribution, the proposed development, considered alone and in combination with other plans and projects, would give rise to likely significant effects on the integrity of the SPA in terms of its recreational effects.

Nitrate enrichment

23. In addition to recreational effects on the SPA, the Council raise concerns regarding the potential for the development to have a harmful effect on the Southampton and Solent Waters Special Protection Area as a result of nitrate enrichment.
24. In this regard, I have been provided with a copy of Natural England's Advice on Achieving Nutrient Neutrality for New Housing Development in the Solent Region (June 2020). This advice states that there are high levels of nitrogen and phosphorus in the Solent region coming mostly from agricultural sources or wastewater from housing and other development. It identifies that the resultant algae and other effects from excessive presence of nutrients impact on the protected habitats and bird species. The advice further states that one way to address this is for new development to achieve nutrient neutrality where the treated effluent discharges into any Solent international sites, or any body of water that subsequently discharges into such a site.
25. While I acknowledge that the proposal seeks to dispose of foul sewage to the mains, and the appellant has advised that sewage would be treated at the Sandown treatment plant, there is no definitive evidence before me detailing where the treatment plant discharges. Notwithstanding that Sandown faces the English Channel rather than the Solent, in the absence of definitive evidence of

the body of water that the treatment plant discharges to, and following the precautionary principle, I cannot be sure that treated foul sewage from the proposal would not discharge into the Solent and its associated Special Protection Area.

26. In light of this and having regard to the conservation objectives of the site, the proposal, in combination with other plans and projects, would have likely significant effects on the integrity of the Special Protection Area in terms of nitrate enrichment.

Habitats sites conclusion

27. In the absence of a suitable mechanism to secure the necessary financial contribution, and in the absence of definitive evidence detailing where the treated foul sewage from the development would discharge, the proposal would have a harmful effect on nationally and internationally protected sites, with particular regard to increased recreational disturbance and nitrate enrichment. It follows that the proposal would fail to comply with IP Policies SP5, DM2 and DM12, which require new development proposals to protect the integrity of international, national and local designations to mitigate its impacts on international nature conservation sites, and conserve and enhance the existing environment and biodiversity.
28. The Council's fifth reason for refusal also references Policy DM14 of the IP but as this relates to Flood Risk and surface water drainage systems, it is not directly relevant to this main issue.

Other Considerations

29. The appeal proposal would provide a number of benefits, including much needed housing in demand on a vacant plot with associated benefits to the local economy and employment. Given the scale and nature of the development, the benefits would be modest.
30. I have had regard to the provision of suitable car parking, outdoor space and the design of the dwellings being in proportion with neighbouring properties. Nonetheless, as these are requirements of local and national planning policies, they are neutral in my consideration.
31. The development would be contrary to the local development strategy, cause harm to ecological features and protected species, fail to make adequate provision for affordable housing and result in likely significant adverse effects on the integrity of the SPA. The relevant policies are largely consistent with the Framework where it states that planning decisions should guide development towards sustainable solutions whilst conserving and enhancing the natural environment and providing affordable housing. Therefore, the proposed development would be contrary to the development plan as a whole and I give significant weight to the conflict with these policies.
32. The Council state that despite it having an emerging local plan that has been to Regulation 18 stage and includes a policies map and proposed housing allocation, requiring them to demonstrate a 4-year supply of deliverable housing sites, given that its Housing Delivery Test measurement is 54%, paragraph 11d) of the Framework is engaged. I have no reason to dispute the stage of the emerging local plan or Housing Delivery Test measurement.

33. However, when the proposal is considered relative to paragraph 11d) of the Framework it falls under footnote 7. In that respect, I have found that the proposal would have an adverse effect on the nationally and internationally protected SPA, which provides a clear reason for refusing the development proposed under paragraph 11 d) i. of the Framework based on application of its policies in Chapter 15 relating to conserving and enhancing the natural environment. It follows that in such circumstances it is not necessary to go on to assess the proposal against the subsequent paragraph 11 d) ii.

Conclusion

34. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

C Rose

INSPECTOR