
Appeal Decision

Site visit made on 2 April 2024

by S Leonard BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2024

Appeal Ref: APP/A1720/W/23/3326155

**Land adjacent to Meadow Brook, Oslands Lane, Swanwick, Southampton
SO31 7EG**

- 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 CR Acquisitions Ltd against the decision of Fareham Borough Council.
 - The application Ref P/22/1582/FP, dated 14 December 2022, was refused by notice dated 8 February 2023.
 - The development proposed is to erect 1 No. 4 bedroom house with garage and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the refusal of the application, the subject of this appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published in December 2023. The main parties have had the opportunity to comment upon the revised Framework in respect of the appeal, and I have taken it into account where relevant to my decision.
3. On 5 April 2023, since the refusal of the planning application and prior to the submission of this appeal, the Council adopted the *Fareham Local Plan 2037* (the Local Plan). The Council has confirmed that the policies of the *Core Strategy* (August 2011) and the *Local Plan Part 2: Development Sites and Policies* (June 2015) have been superseded by the new development plan, and that Local Plan Policies CC2, TIN2, NE3 and NE4 are most relevant to the Council's reasons for refusal. These policies are consistent with the approach of the policies which they replace and those of the Framework.
4. This appeal must be determined in accordance with the development plan in place at the time and, as such, it is the new Local Plan policies to which I have had regard in reaching my conclusions below.

Main Issues

5. The main issues are:
 - Whether the appeal site would be a suitable location for a dwelling, having particular regard to flood risk and the application of the Sequential Test (ST);

- The effect of the proposal on highway safety, with particular regard to access design; and
- The effect of the proposal on the integrity of the Solent Coastal SPAs and the New Forest SPA/SAC/Ramsar (the European Sites).

Reasons

Flood Risk

6. The site lies on the north side of Oslands Lane, within open countryside to the southeast of Lower Swanwick. The site comprises an area of undeveloped land which was formally part of the garden of an adjacent dwelling to the west which is known as Meadow Brook. There are several other residential properties sporadically positioned along the north side of the lane, including to the rear and east of the appeal site. There is also mixed residential and commercial development along Bridge Road to the south of the site.
7. The proposal comprises a detached dwelling with vehicular access from Bridge Road, via part of Oslands Lane. The latter is a narrow, unadopted road which also incorporates a public footpath. The information before me from the County Council is that there is no public right of access for motorised vehicles, since it is only a public highway in respect of being a Public Right of Way (PROW) Footpath, and that a legal easement for vehicular access to the site by the appellant is required. As such, I am satisfied that the application site includes the proposed access to the new dwelling.
8. The Framework is clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Accordingly, the Framework sets out a sequential test, whereby development should not be permitted in areas known to be at risk now or in the future from any form of flooding, unless there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. As such, the Framework steers new development towards areas with the lowest risk of flooding from any source.
9. This advice is reiterated in the national Planning Practice Guidance (PPG)¹ which confirms that it is only where the developer can demonstrate, by undertaking a ST, that there are no reasonably available sites in Flood Zone 1, that decision makers should take into account the flood risk vulnerability of a proposal and consider reasonably available sites in Flood Zones 2 or 3.
10. Part of the wider rectangular shaped plot of land within the appellant's ownership has been excluded from the appeal site, resulting in a proposed irregular-shaped site frontage to the road. This rather contrived element of the proposed boundary of the new dwelling has resulted in land immediately in front of the proposed dwelling which lies within Flood Zones 2 and 3 as a result of proximity to the River Hamble, being excluded from the proposed residential curtilage.
11. Moreover, the proposed dwelling garage and the part of the access drive which lies outside of Oslands Lane would lie within Flood Zone 1, thus at lowest risk of flooding.

¹ Paragraph:024 Reference ID: 7-024-2022085

12. Notwithstanding this, whilst most of the appeal site lies within Flood Zone 1, part of the section of Oslands Lane which would provide vehicular access for the development, together with a small area adjacent to the western edge of the proposed residential frontage lies within Flood Zone 3. There are also 2 small pockets of Flood Zone 2 land within the appeal site. These areas form part of the development proposed, notably forming part of the sole vehicular means of vehicular access to serve the new dwelling, which the Framework seeks to direct away from areas at highest risk.
13. To fully apply the ST, it is reasonable to expect the appellant to provide detailed information in respect of how a search for alternative undeveloped or previously developed sites outside flood risk areas has been carried out, the potential availability of any such alternative sites, and, if available, why they are not suitable for the appeal scheme.
14. Such information would reasonably include an explanation of the evidence base used for identification of such sites, the criteria against which they were considered, and justification as to why they are not suitable, having regard to factors such as location or availability for development.
15. The appellant has not provided a ST and the proposal does not comprise any of the categories of development that are precluded from the requirement for Sequential and Exceptions tests as set out in the Framework².
16. Moreover, the PPG³ states that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the ST still needs to be satisfied. Therefore, notwithstanding the proposed siting of the dwelling and garage building within Flood Zone 1 and the appellant's submitted flood risk assessment, it is still necessary for the ST to be applied to the proposal.
17. The appellant states that a lack of a ST did not constitute a reason for refusal in respect of previous refused applications in 2003⁴ and 2012⁵ for a dwelling on the appeal site, the latter being the subject of a dismissed appeal⁶. Moreover, the evidence before me is that the Council did not seek a ST when approving permission⁷ in 2016 for a new dwelling on land to the west of Meadow Brook which also lies within a high flood risk area.
18. The main parties have not provided details of all the relevant development plan policies and national planning guidance in place at the time of these decisions. Notwithstanding this, I must determine this appeal based on the proposal before me and the current circumstances of the appeal site, and in the light of assessment against the recently adopted Local Plan policies and current version of the Framework. The fact that the Council may have acted erroneously in the past when considering this matter, does not justify non-compliance with the current policies and guidance when determining this appeal.
19. For the above reasons, I therefore conclude that there is insufficient substantive evidence before me to conclude that the requirements in respect of

² Footnote 60

³ Paragraph:023 Reference ID: 7-023-20220825

⁴ P/03/1507/OA

⁵ P/12/0587/OA

⁶ APP/A1720/A/13/2192845

⁷ P/16/0417/FP

the ST have been passed. As such, the appeal site would not be a suitable location for the proposal, having particular regard to flood risk and the application of the ST. The proposal would therefore conflict with Local Plan Policy CC2 which seeks to direct development away from areas at highest risk of flooding now and in the future, and, amongst other things, requires proposals to meet the ST as set out in the Framework.

Highway safety

20. Oslands Lane is a quiet, narrow private lane. As such, daily vehicular traffic passing the appeal site is likely to be largely restricted to traffic associated with the several other dwellings further east along the road. These users are likely to be familiar with the lane and the position of vehicular access points along it, thereby reducing the likelihood of drivers being surprised by exiting cars.
21. There would also be passing traffic associated with Andark Lake, a diving and swimming venue which is sited further east along Oslands Lane, and traffic using the car park of the Dive Centre and its shop which is sited opposite the appeal site. Whilst users of the lake and the commercial car park would be restricted by the opening hours of the premises, the evidence before me from third parties is that vehicle use associated with these premises can be intense on occasions. I have taken this into account in my consideration of the matter of highway safety.
22. I have also noted the proximity of the Dive Centre carpark entrance to the appeal site. However, I note that it benefits from a wide access point, which is reached prior to passing the appeal site, and I find that it is reasonably likely to be approached at a low speed given its proximity to the junction with Bridge Road from which it would be approached.
23. Moreover, signs have been erected near the appeal site notifying of a 10-mph speed limit on the lane, which is reasonable having regard to the status of the lane as a public right of way and the safety of users other than vehicle drivers. Due to factors including the narrow road width, poor surface conditions in places, instances of surface water flooding during heavy rain and a bend further along the road east of the appeal site which reduces visibility, I find that the prevailing circumstances would be naturally conducive to drivers using caution and observing this speed limit.
24. As such, I find that vehicles passing the appeal site would generally be expected to travel at a very low speed. Moreover, the comings and goings associated with the occupation of the appeal site as a single dwelling would be low, so as not to generate an unduly large number of opportunities for collisions with other road users.
25. Also, the appeal site is located on a straight stretch of the road, which together with the removal of vegetation from the front part of the site, means there is potential for good visibility for drivers exiting the appeal site.
26. Having regard to all of the above, combined, I am satisfied that conditions exist whereby a new vehicular access to serve a single dwelling could be incorporated onto the appeal site in the position proposed without demonstrably harming highway safety.
27. Moreover, I have noted the Road Traffic Collision data submitted by the appellant, which confirms that there has been no recorded history of accidents

along Oslands Lane during the 5 years between 2018 and 2022. I have not been presented with substantive evidence to demonstrate the contrary regarding accidents along the lane. This weighs in favour of the proposal.

28. For the above reasons, and in the absence of cogent evidence from the Council to the contrary, I conclude that it has not been satisfactorily demonstrated that the appeal scheme would result in material harm to highway safety, with particular regard to access design. As such, the proposal would not conflict with the highway safety aim of Local Plan Policy TIN2.
29. For similar reasons, the proposal accords with Paragraph 115 of the Framework, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts of development would be severe.

European Sites

30. The appeal site lies within the Zones of Influence of the Solent and New Forest European Protected Sites (the EPS), where a net increase in housing development is likely to result in impacts to the integrity of these sites, as a result of increased levels of nutrients from wastewater entering into the Solent water environment and increased recreational usage associated with new residential developments. Such impacts would require the inclusion of a package of avoidance/mitigation measures to address these effects.
31. The appellant has confirmed willingness to provide the required mitigation measures, to be secured by means of a Unilateral Undertaking. However, there is no such legal agreement before me.
32. Within the context of the appeal, the responsibility for assessing the effects of the proposal on the EPS falls to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine the above matters further, including seeking further information from both main parties and, potentially, consulting with Natural England, and to undertake an Appropriate Assessment (AA) of the implications of the appeal scheme for the EPS.
33. I would need to be satisfied that any mitigation schemes for addressing the recreation and foul water impacts of the development on the EPS are certain at the time of AA, so that no reasonable scientific doubt remains as to the effects of the development on the internationally designated European sites.
34. However, as there are other clear reasons for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this appeal. Therefore, I do not need to consider these matters any further as part of my decision.

Planning Balance

35. The most recent 2022 Housing Delivery Test results, published on 19 December 2023 show that Fareham delivered 42% of its housing requirement over the preceding 3 years. Accordingly, Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where the Housing Delivery Test indicates

that the delivery of housing was substantially below the housing requirement over the previous three years.

36. Paragraph 11 states that where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development proposed, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.
37. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be close to a settlement where access to facilities and public transport connections is likely to be greatest.
38. Paragraph 60 of the Framework refers to significantly boosting the supply of homes, and an additional dwelling would make a small contribution towards the Council's housing supply. Moreover, it could be built out relatively quickly, having regard to Paragraph 70 of the Framework.
39. There would be economic benefits as a result of the construction of the dwelling and economic and social benefits as a result of its future occupation. These considerations weigh in favour of the development, and I afford them moderate weight, having regard to the modest size of the proposed housing development.
40. The Council has raised no objection to the appeal scheme in respect of matters including detailed design, impact on the character and appearance of the area, impact on the living conditions of neighbours and future occupiers and on-site ecology and biodiversity, and I have found no harm in respect of the second main issue. In terms of the planning balance, the lack of identified harm is a neutral factor.
41. Whilst the Framework encourages the effective use of land in meeting the need for homes and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified.
42. Having given careful consideration to the balance of factors, notwithstanding whether footnote 7 to Paragraph 11 of the Framework applies with respect to habitat sites, I consider that, when assessed against the policies in the Framework taken as a whole, the significant harm that would arise from the proposal in respect of flood risk would significantly and demonstrably outweigh the benefits. As a result, the environmental objective of sustainable development of mitigating and adapting to climate change would not be achieved. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

43. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR