

Appeal Decision

Site visit made on 9 August 2024

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2024

Appeal Ref: APP/P2114/W/23/3332858

Land rear of The Annexe Brambles, Off Colwell Road, Freshwater, Isle of Wight

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Richard Osman against the decision of Isle of Wight Council.
 - The application Ref is 23/01279/FUL.
 - The development proposed is Proposed 2 residential dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for Proposed 2 residential dwellings at Land rear of The Annexe Brambles, Off Colwell Road, Freshwater, Isle of Wight in accordance with the terms of the application, Ref 23/01279/FUL, subject to the conditions in the attached schedule.

Preliminary Matters and Main Issue

2. The address in the banner heading above has been taken from the decision notice as this more clearly identifies the site than that given on the application form.
3. Since the appeal was made, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023. All parties were given an opportunity to comment on the publication and I have taken the revised Framework into account as part of the determination of this appeal.
4. During the course of the appeal the appellant submitted a signed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990. This secures mitigation for the effect of future occupiers on the Solent Special Protection Area (SPA). Although the Council has confirmed that this addresses the second reason for refusal, it is a matter I will return to below. In addition to mitigation to the SPA, the UU also secures a financial contribution towards affordable housing. The Council has confirmed that this addresses the third reason for refusal, and I have no reason to disagree.
5. In light of the above, the main issues are the effect of the proposal:
 - on the character and appearance of the area; and,
 - on the integrity of the SPA.

Reasons

Character and appearance

6. The appeal site is located to the north of Freshwater off a private lane that itself is accessed off Colwell Road located in close proximity to the appeal site. The appeal site is grassed and relatively flat. The private lane lies to the west of the site with a bank and substantial planting forming a boundary between them and only allowing glimpsed views of the site from the lane. The site is adjoined by paddocks to the north and east, and by the rear of Brambles Corner, a residential dwelling beyond high boundary planting separating it physically and visually from the appeal site to the south. Beyond the paddocks to the north is a dwelling known as Dexters Cottage with Green Meadows. There is a four-storey development of flats beyond the paddock to the east.
7. The immediate site context is a transitional one between the built form of Freshwater and the farm complex and holiday cottages set in a rural landscape further to the north. As a result, when exiting Colwell Road and travelling towards the site, there is a sense of leaving the settlement and transitioning to the countryside.
8. Policy SP1 of the Island Plan, Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document March 2012 (CS) requires proposals to clearly demonstrate how it will enhance the character and context of the local area. This is supported by CS Policies DM2 and DM12. Policy DM2 supports proposals for high quality and inclusive design to protect, conserve and enhance our existing environment. Policy DM12 seeks to support proposals that conserve, enhance and promote the landscape, seascape, biodiversity and geological interest of the Island.
9. Due to the existing development and screening to the north, east and south of the appeal site, it is not visible in distant views. The most prominent views of the site and proposal would be from the private lane. The lane forms part of a formal public footpath (F10 route). From here, the site and proposed development would be glimpsed through the retained boundary treatment, and through the proposed new access.
10. By reason of the introduction of the development onto the site, the proposal would extend the built form further along the lane. Although views of the development from the lane would be limited by existing and proposed planting and viewed in the context of Brambles Corner and Green Meadows, it would nonetheless extend built form into this transitional area. I acknowledge that views would diminish over time, but the site would not be totally screened given remaining views through the access.
11. In light of this, I have no reason to disagree with the Summary of Landscape and Visual Effects on pages 41 and 42 of the appellant's Landscape Visual Assessment July 2023 with regard to there being moderate effects on the site character, slight effect on the character of the immediate area and slight-moderate visual effects on users of the private lane.
12. In this regard, and although there would be no substantial or moderate / substantial landscape or visual effects, with the immediate area having no

distinct style of built form resulting in the design of the dwellings being appropriate, by reason of the introduction of built form into this transitional landscape with glimpsed views from the private lane/public footpath, the proposal would not enhance the character and context of the local area or protect, conserve and enhance the landscape. The reference to another appeal decision¹ does not change my assessment given its distance from the appeal site and differing context.

13. It follows from the above that the proposal would harm the character and appearance of the area. As such, it does not comply with CS Policies SP1, DM2 and DM12, the aims of which I have outlined above. Furthermore, the proposal would be contrary to the Framework where it seeks to protect and enhance our natural environment.

Integrity of the SPA

14. The appeal site is within the 5.6km Zone of Influence 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.
15. 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.
16. Whilst not a precise correlation, the potential for adverse effects increases with the number of dwellings nearby, including within a wide zone of influence (and therefore the aggregate, or in-combination, implications of a number of smaller developments may be significant). 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.
17. Visits by the intended occupiers of the proposal to the SPA for personal recreation may lead to disturbance to the overwintering waders and wildfowl which contribute to the designation of the area as a nature conservation site.
18. 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

¹ APP/P2114/W/20/3265120

am satisfied that likely significant effects to the ecological integrity of the SPA would be avoided.

19. As stated above, a signed Unilateral Undertaking has been submitted by the appellant and accepted by the Council. This would provide a financial contribution towards ecological monitoring and management arrangements in that context, consistent with the Council's approach. I have consulted with Natural England which has confirmed that the payment is sufficient to avoid adverse impacts on the integrity of the European Sites and their features. Consequently, I am satisfied that likely significant effects to the ecological integrity of the SPA would be avoided in accordance with CS Policies SP5 and DM12 that seek to protect the integrity of international, national and local designations, respond to the SRMS and conserve, enhance and promote biodiversity.

Other Considerations

20. I have had regard to the comments from Freshwater Parish Council and Public Rights of Way in relation to the location of the vehicular access/site off public footpath F10. While the proposal would introduce two further dwellings off the footpath, the path is relatively quiet, already serves a number of properties and a farm and the location of the proposal would promote its use. Furthermore, it is wide enough for pedestrians and vehicles to pass safely and can accommodate the limited number of additional vehicles without causing harm to the safety of its users. As such, the proposal would promote, protect and maintain the footpath in accordance with Policy FNP 7a of the Freshwater Neighbourhood Plan – March 2017 – 2027.
21. I have also had regard to the comments from Freshwater Parish Council in relation to the management of foul water. However, the development would be connected to the public sewer that discharges to Sandown Waste Water Treatment Works and into the English Channel. I have no reason to conclude that this would not be sufficient and would not result in any harmful nitrate enrichment of the SPA. It is noteworthy that the Isle of Wight Council came to a similar conclusion in this regard.
22. Paragraph 57 of the Framework and Regulation 122 of the CIL Regulations sets out three tests that planning obligations must meet. Firstly, they must be necessary to make the development acceptable in planning terms, secondly, they must be directly related to the development and finally they must be fairly and reasonably related in scale and kind to the development.
23. I am satisfied that the financial contributions towards the SPA and affordable housing are necessary to make the proposed development acceptable in planning terms. The obligation would contribute towards reducing recreational disturbance on the SPA and to the provision of affordable housing. Given the location of the appeal site, I consider that the contributions are directly related to the appeal scheme. In addition, as they relate to standard charges based on the scale and type of residential development proposed, I consider them to be fairly and reasonably related to the proposal in scale and kind. For these above reasons, I am satisfied that the planning obligation would meet the requirements of the Framework and the CIL Regulations.

Planning Balance

24. The Council acknowledge that they are currently unable to demonstrate a five-year supply of deliverable housing sites. Therefore, and given that I have found no harm to the SPA as an asset of particular importance under Paragraph 11d) i of the Framework, the presumption in favour of sustainable development outlined in Paragraph 11d) ii is engaged. Paragraph 11 d) states that where policies that are most important for determining a proposal are out of date, permission should be granted unless 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.
25. The proposal would conflict with the development plan where it seeks to enhance the character and context of the local area and protect, conserve and enhance the landscape. These policies/parts of policies are broadly consistent with the Framework where it states that the planning system should seek to protect the character and appearance of areas. As a result, they still carry a reasonably significant amount of weight.
26. Addressing the adverse impact of the proposed development first, it would be located such that there would be a degree of urbanisation and countryside encroachment through additional dwellings. However, it would be partly screened and viewed in association with other development with the adverse impacts diminishing over time. Thus, the adverse impacts on the character and appearance of the area would be limited.
27. Turning to the benefits, the proposal would contribute to the supply of energy-efficient housing and add towards addressing the existing shortfall in housing land supply. The site is located such that it would help to reduce the need to travel by car. The proposal would align with the Framework where it seeks to significantly boost the supply of housing and acknowledges that small-scale developments can make an important contribution to meeting the housing requirement and be built out quickly. These benefits are tempered by the scale of the proposal, but nevertheless carry modest weight in favour of the development.
28. In this instance, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the presumption in favour of sustainable development as outlined in Paragraph 11d) ii of the Framework applies and this indicates that permission should be granted.

Conditions

29. I have had regard to the tests in the Framework in relation to conditions, and the planning conditions suggested by the Council. In addition to the standard time condition, it is necessary for a condition to confirm the approved plans in the interests of certainty.
30. Pre-commencement conditions are necessary to secure the submission and approval of details of the construction and drainage of the junction, and the provision of the submitted tree protection measures. These are required in the interests of highway safety and protecting the character and appearance

of the area during and after the carrying out of the development. As details of tree protection measures have been submitted with the application, the details do not require separate submission or approval.

31. A further pre-commencement condition is necessary to secure the submission, approval and provision of a wildlife and habitat protection plan, mitigation and enhancement in the interests of protecting and enhancing ecology.
32. A condition is necessary to secure details of hard and soft landscaping in the interests of protecting the character and appearance of the area. I have combined the Councils two conditions in relation to this into one condition for reasons of clarity.
33. A condition is required to ensure that the parking spaces are provided, and driveway suitably drained before first occupation in the interests of highway safety.
34. A further condition removing permitted development rights for enlargement, improvement or alteration of the dwelling or outbuildings is necessary in order to protect the landscaping around the site and in the interests of protecting the boundary trees and planting and character and appearance of the area. In light of the size of the dwellings and their positions centrally within their plots, I do not find a need to remove permitted development rights for additions or other alterations to the roof or for porches.
35. The Council have suggested a further condition in relation to the provision of visibility splays. Although there are no details of visibility splays on the submitted plans, this can be adequately dealt with under the condition requiring details of the construction of the junction and reflected in the soft and hard landscaping details. As such a separate condition is not necessary.
36. I note that Public Rights of Way have suggested a number of other conditions, but these details can be adequately covered through the condition requiring the submission of details related to the construction of the junction and as such do not require a further condition.
37. In the interests of conciseness and clarity, I have amended the suggested wording to some of the conditions and removed any tailpieces.

Conclusion

38. The proposal would not accord with the development plan but material considerations, especially the presumption in the Framework, outweigh this conflict. Therefore, for the reasons given, the appeal should succeed.

C Rose

INSPECTOR

*****SCHEDULE OF CONDITIONS*****

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos. 507/VW/22/1 Rev F Planning Drawings Block Plan Proposed and Planting Scheme ETC, 507/VW/22/2 Rev D Planning Drawings Floor plan, Elevations ETC and Tree Protection Plan reference WIT-22-23-005-TPP-A.
- 3) Development shall not begin until details of the construction and drainage of the junction between the proposed access and The Brambles (incorporating the existing ditch system) have been submitted to and approved in writing by the Local Planning Authority and the building shall not be occupied until that junction has been constructed in accordance with the approved 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 the protective tree fencing on the Tree Protection Plan reference WIT-22-23-005-TPP-A has been carried out. The protective fencing shall be maintained until all equipment, machinery and surplus materials related to the construction of the development have been removed from the site. Nothing shall be stored or placed in any fenced area in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, unless otherwise authorised by this permission.
- 5) No development shall take place until a wildlife and habitat protection plan, including wildlife mitigation and enhancement measures has been submitted to and approved in writing by the local planning authority. The protection plan shall include:
 - A plan showing construction exclusion zones and permanent wildlife buffers around the hedgerows;
 - Details of sensitive development and construction methods within the wildlife protection zones and measures to be taken to minimise the impact of any works;
 - Details of a sensitive lighting strategy for construction and operation;
 - Details of sensitive hedgerow removal, management and creation;and,
 - Installation of bird and bat boxes.The protection plan shall be implemented in accordance with the approved plan.
- 6) The development shall not be occupied until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing

materials; proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines, etc, indicating lines, manholes, supports, etc). Soft landscape works shall include a schedule of plants, noting species, plant sizes and proposed numbers/densities, planting methodology and an implementation programme. Planting shall be carried out in accordance with the agreed details and shall be regularly maintained. Any trees or plants that die, are removed or become seriously damaged or diseased within 5 years of planting are to be replaced in the following planting season with specimens of a like size or species unless the Local Planning Authority gives written consent to any variation for a period of five years from the date the approved scheme was completed.

- 7) No dwelling hereby permitted shall be occupied until space has been laid out within the site in accordance with drawing number 507/VW/22/1 Rev F Planning Drawings Block Plan Proposed and Planting Scheme ETC and drained and surfaced in accordance with details that have been submitted to and approved in writing by the Local Planning Authority for two conventional motor vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The space shall not thereafter be used for any purpose other than that approved in accordance with this condition.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development within Classes A and E of Part 1 of Schedule 2 to that Order shall be carried out [other than that expressly authorised by this permission].

*****END OF SCHEDULE*****