



Appeal Decision

Site visit made on 12 September 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2024

Appeal Ref: APP/P2114/W/24/3344210

1 Forest Dell, Newchurch, Isle of Wight PO36 0LG

- 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 Jeremy Hannan against the decision of the Isle of Wight Council.
 - The application Ref is 24/00237/FUL.
 - The development proposed is described as: "a proposed detached bungalow and vehicular access (revised scheme)".
-

Decision

1. The appeal is allowed, and planning permission is granted for a proposed detached bungalow and vehicular access at 1 Forest Dell, Newchurch, Isle of Wight PO36 0LG in accordance with the terms of the application, Ref 24/00237/FUL, subject to the schedule of conditions attached at the end of the decision.

Preliminary Matters

2. In my decision above I have removed reference to the proposal being a 'revised scheme' as this is not an act of development.
3. On the 30 July 2024 the Deputy Prime Minister and Secretary of State for Housing, Communities, and Local Government issued a Written Ministerial Statement "Building the homes we need" regarding changes to the planning system, and consultation was started on "Proposed reforms to the National Planning Policy Framework and other changes to the planning system". The main parties have had the opportunity to make submissions regarding both documents in the context of the appeal proposal, and these have been taken into account in my determination of the appeal.
4. The appellant has provided a Unilateral Undertaking dated 14 March 2024 (UU) which would make financial contributions towards Habitat Mitigation and affordable housing. The Council has confirmed that the UU addresses its reasons for refusal no's 2 and 3, I shall return to the UU later in my decision.

Main Issues

5. Taking into account the reasons for refusal and the contributions contained in the UU, the main issues with this appeal are:
 - The effect of the proposed development upon the character and appearance of the area, with particular regard to its siting, design, and density;

- Whether the financial contribution towards affordable housing is reasonable and necessary to make the development acceptable; and,
- The effect of the proposal on the Solent and Southampton Water Special Protection Area (SPA).

Reasons

Character and appearance

6. The appeal site comprises part of the rear and side garden of No. 1 Forest Dell, which is a single storey property that has recently had its external walls rendered and finished in a light colour. Forest Dell is a cul-de-sac comprising other single storey properties that are arranged around the turning areas at the end of the cul-de-sac. The entrance to the cul-de-sac from Forest Road is relatively straight and there are established hedges on either side of the road, it also goes directly passed the side of 49 Forest Road. The appeal site also has a road frontage onto the straight part of the entrance road into the cul-de-sac.
7. Although there is some separation between the properties on Forest Dell and Forest Road, there are limited spaces between the properties on Forest Dell themselves, resulting in more development being concentrated towards the end of the cul-de-sac. In addition, there is considerable variation in the appearance of the properties on Forest Dell and of their setbacks from the pavement, which partly reflects the irregular layout of its roadway and turning areas.
8. I saw on my site inspection that the appeal site contains some low-level planting and has been partly fenced off from No. 1 Forest Dell. There are views from within Forest Dell into the appeal site, however, such views were mainly towards the rear elevations and gardens of other properties beyond the appeal site, including views of ancillary domestic structures and planting. I did not regard the views into and beyond the appeal site to be significant or to positively contribute to the character and appearance of the area.
9. Whilst the infilling of this space would add to the built form on Forest Dell, the siting of the proposed dwelling would be representative of the arrangement of existing properties and reflect the limited spaces between them. In addition, there would be a generous amount of space retained between the appeal site and No. 49, which is also orientated differently, together these factors would ensure that these respective properties were seen separately from one another. Furthermore, even with the development of the appeal site, there would still be a landscaped entrance into Forest Dell, which would ensure it maintained its spacious character in this part of the cul-de-sac.
10. It is acknowledged that the size of the appeal site is smaller than many other plots at Forest Dell, nevertheless, it is of a sufficient size to adequately accommodate a dwelling, a parking space, and have outdoor space to its front and rear sides. The space retained between it and the surrounding properties (including No. 1), would ensure it did not appear cramped or squeezed into the appeal site. There would also be adequate outdoor space retained for No. 1. Considering the position of No. 13 Forest Dell, on the opposite side of the entrance road into the cul-de-sac, the siting and orientation of the proposed dwelling, which is angled into the cul-de-sac, would harmonise with the arrangement of existing properties, and would not be visually dominant.

11. Notwithstanding it would be nearer to the pavement than other properties in Forest Dell, the existing variance in setbacks of the properties within the cul-de-sac would ensure that the proposal would not appear inconsistent with the existing character and appearance. Furthermore, the plans show planting between the front elevation of the proposed dwelling and the pavement, which would help to integrate the proposal into its surroundings.
12. The width of the proposed dwelling and its relatively limited depth would be consistent with the shape and design of other properties in the cul-de-sac. Although the design of the proposed dwelling has some differences from those others nearby, notably its mono-pitch roof design, this design feature would add some visual interest to its appearance, and it would retain a broadly similar form to other properties nearby. Moreover, its modern appearance would not harmfully contrast against the properties on Forest Dell. As a result, the design of the proposed dwelling would relate well to the character and appearance of the area.
13. The single storey scale of the proposed dwelling would be broadly representative of the height and size of properties nearby. The proposed dwelling would have its external walls partly rendered along with timber panelling with dark grey coloured window frames, under a dark grey tiled roof. I saw that its appearance would be broadly consistent with the exterior of No. 1 Forest Dell. I note the concerns by interested parties regarding how the proposed external materials differ to most other properties nearby. However, the proposed external materials reflect its modern design, and they would appear very similar to those used on No. 1, they would also portray a high quality appearance, consequently I am content they would not be harmful to the character and appearance of the area. The exact details of the external materials can be the subject of a planning condition. It is also noteworthy that that the Council found similarly in respect of the scale and external materials of the proposal.
14. I therefore conclude that the proposed development would relate well to the character and appearance of the area and comply with the relevant parts of Policies SP5, DM2, and DM11 of the Island Plan, Isle of Wight Core Strategy (including waste and minerals) and Development Management, Development Plan Document, dated March 2012 (IP) that amongst other things seeks to ensure new development is high quality that positively conserves and enhances the special character of the Island's historic and built environment. In addition, the proposal would also comply with paragraph 135 of the National Planning Policy Framework (the Framework) insofar as it requires new development to add to the overall character of an area and be sympathetic to local character.

Affordable Housing Contribution

15. The 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 its occupation.
16. The financial contribution would be used for the provision or improvement/alteration of affordable housing, firstly within the parish itself, and then if there was no need, adjoining parishes, and then on sites across the Isle of Wight generally. The Council has advised they are satisfied that the UU secures the affordable housing contribution and addresses it earlier reason for refusal no. 3. 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.).

17. IP Policy DM4 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 65 of the 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.
18. In view of the Court of Appeal judgement¹ 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 of Wight'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.
19. 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. The provision of the contribution as set out above would comply with IP Policy DM4 and the relevant parts of the AHSPD, which outweigh the WMS, and the guidance within both the Framework and PPG in this case. The obligation within the UU in this regard is reasonable and necessary to make the development acceptable and related in scale and kind to it, and it meets the tests set out in Regulation 122(2) of the CIL Regs, and paragraph 57 of the Framework. Consequently, I have taken the UU into account in coming to my decision.

Effect on the Solent and Southampton Water Special Protection Area

20. 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. The Council has provided a copy of its Appropriate Assessment on this proposal, which I have had regard to.
21. The qualifying features of this European site most likely to be affected by the proposal, include over-wintering birds, namely; branta bernicla bernicla (darkbellied brent goose); anas crecca (eurasian teal); charadrius hiaticula (ringed plover); limosa limosa islandica (black-tailed godwit); larus

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council (2016)

melanocephalus (mediterranean gull); sterna sandvicensis (sandwich tern); sterna dougallii (roseate tern); sterna hirundo (common tern); and sterna albifrons (little tern).

22. 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 developments 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

23. 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.
24. 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 payment amount as set out in the relevant provision of the appellant's UU is required by the SRMS, and it is acceptable.
25. In terms of recreational impacts upon the SPA, I am content that the UU is necessary, directly related to the development and fair and reasonable in scale and kind. As such it accords with the provisions of Regulation 122 of the CIL Regs, and the tests within paragraph 57 of the Framework. As the competent authority in this appeal, I am also satisfied that with regard to recreational impacts, the UU would secure suitable mitigation to protect the integrity of the SPA and I will take them into account in coming to my decision.
26. Regarding the drainage of foul water, the Council has adopted the Isle of Wight Position Statement: Nitrogen neutral housing development January 2024 (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, 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 collected by the mains sewer which would then discharge into Sandown wastewater treatment works, which would then discharge after treatment into the English Channel. NE has been consulted on this and raised no objection to this approach and considers it adequately mitigates any adverse effects upon the SPA.

27. This approach can be the subject of a condition requiring exact details of the foul water drainage to be agreed and implemented prior to the commencement of development, which would ensure there would be no likely significant effects upon the SPA from foul water entering the Solent.

Conclusion

28. For the reasons set out above, and taking account of the mitigation measures proposed, the proposal would not adversely affect the integrity of the SPA. Consequently, the proposal would comply with IP Policies DM2 and DM12, which amongst other things, require development to protect and conserve the environment and avoid adverse effects on the integrity of designated biodiversity sites.

Other Matters

29. I have also had regard to objections from interested parties relating to several different issues, in addition to the main issues above, including the effect of the proposal on the living conditions of adjoining occupiers and in terms of highway safety. In view of the proposed dwelling being single storey and its separation distance to neighbouring properties, and providing that there are suitable boundary treatments (which can be a condition), there should be no unacceptable privacy issues. Nor should the use of the dwelling cause unacceptable noise for nearby occupiers, and its limited size and single storey height amongst other properties in this location should not create unacceptable light pollution. The proposal would have its own on-site parking space, whilst I can understand the concerns of residents about parking and road safety on Forest Dell and its junction with Forest Road, no substantive evidence has been provided to show that the proposal in question would be harmful to highway safety. I also note that the Council did not find harm in respect of living conditions and highway safety, and there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
30. There is insufficient information submitted to demonstrate that allowing this appeal could create an unacceptable precedent for other developments nearby, or that such development is likely to occur and that it would be harmful to the character and appearance of the area. In addition, no substantive evidence has been submitted to justify any potential effects of the proposal upon property prices nearby. Nor have I been provided with a copy of any restrictive covenants that would prevent development such as the proposal, and in any case, these are not usually relevant to land-use planning matters. As such, these arguments have not led me to conclude differently regarding my conclusions above.
31. It has been said that an existing sewer nearby has had some blockages and there are concerns about the addition effects of the proposed dwelling. Although, I note Southern Water has not raised objection to the proposal or identified any connection issues regarding the draining of the appeal site to their infrastructure. It is unclear what has caused any such blockages, and what effect, if any, the proposal would have on such issues, it is also noted that the Council did not identify any harm in this respect, and from the information before me I see no reason to disagree.

32. Interested parties have also said that the appeal site previously contained rubbish; that vegetation and planting was cleared prior to the application; that No. 1 has been used for Air B and B; and that works may have occurred regarding a new driveway. From my own site inspection, I was not able to conclude that a new driveway had been formed on the appeal site. In the circumstances, this, and these other matters do not relate to the planning merits of the appeal proposal before me.
33. I am content that the submitted plans accurately show both the appeal site and the proposed development. I note the comments about the timing of the publicity for the planning application, but there is nothing before me that demonstrates the publicity for the application has not been properly undertaken by the Council.

Conditions

34. A standard implementation condition (1) has been imposed, along with a condition (2) listing the approved plans to provide certainty over what has been approved.
35. Conditions (3 and 7) are also necessary to control the external finishes of the buildings, hard landscaping, and the boundary treatments of the appeal site (not all boundary details are provided), to ensure the proposal relates well to the character and appearance of the area. Although the approved plans detail options for the external materials, these are not precise, hence the condition is required. The permeability of the hard-surfaced areas is also required to minimise flood risk and surface water run-off.
36. A condition (5) is necessary to ensure adequate space is provided for an on-site parking space, to protect highway safety and limit any on-street parking. Whilst the Council's suggested condition referred to the approved plan in this respect, that plan does not show a dedicated parking space, although I am satisfied that there is adequate on-site space capable of providing such a space.
37. Due to the limited information provided, it is also necessary to condition (4) details of soft landscaping, and the maintenance of the new planting, to ensure a satisfactory external appearance and for the proposed dwelling to integrate well into its surroundings.
38. I have imposed a drainage condition (6), which is necessary to ensure satisfactory on-site foul and surface water drainage arrangements, and to prevent harmful impacts on the SPA and nearby watercourses.
39. The Council suggested a condition in respect of details of external lighting, and of any external structures such as secure cycle storage areas and bin stores. However, the approved plans do not show any such external structures, nor have I been made aware that such a condition would be necessary. Given that the location of the appeal site is within an existing settlement with housing on all sides, I am not persuaded an external lighting condition would be necessary.
40. Reference is made by Southern Water to a condition regarding a possible sewer that could cross the appeal site. There is no certainty in the information as to whether such a sewer crosses the appeal site, and in view of this doubt, I was not persuaded that such a condition would be reasonable or necessary in this case.

Conclusion

41. The proposed development accords with the development plan when taken as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. For the reasons given above, I conclude that the appeal should be allowed.

A Hunter

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan; and drawing no. 22-933-01 Rev C.
- 3) No development shall take place until a scheme for the drainage and disposal of surface and foul water from the development hereby permitted, has been submitted to and approved in writing by the Local Planning Authority. Foul drainage shall be connected to the public sewer and shall be served by the Southern Water Wastewater Treatment Works (WWTW) at Sandown. Development shall be carried out in accordance with the approved scheme, which shall be completed prior to the occupation of the dwelling(s) hereby permitted and be retained thereafter.
- 4) Construction of the dwelling hereby permitted shall not proceed above foundation level until details of the materials and finishes to be used on the external surfaces of the dwelling, along with details of all external ground surfacing materials, including their permeability, 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.
- 5) The dwelling hereby permitted shall not be occupied until full details of soft landscaping for the site have been submitted to and approved in writing by the Local Planning Authority, together with an implementation timetable and details of their future maintenance. The development shall be undertaken in accordance with the approved details, timetable, and maintenance measures.
- 6) The dwelling hereby permitted shall not be occupied until one on-site parking space has been formed, in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. Thereafter the parking space shall be retained for its intended use and not used for any other purpose.
- 7) The dwelling hereby permitted shall not be occupied until precise details of all the boundary treatments of the appeal site have been submitted to and approved in writing by the Local Planning Authority together with a timetable for their implementation. The development shall be undertaken in accordance with the approved details, and timetable.

END OF SCHEDULE OF CONDITIONS