



Appeal Decision

Site visit made on 25 June 2024

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 25th October 2024

Appeal Ref: APP/B1740/W/23/3331106

75 Burley Road, Bockhampton, Hampshire BH23 7AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Pinchin against the decision of New Forest District Council.
 - The application Ref is 23/10096.
 - The development proposed is construction of one dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of one dwelling at 75 Burley Road, Bockhampton, Hampshire, BH23 7AJ in accordance with the terms of the application, Ref 23/10096, and subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was submitted in outline with all matters reserved. Under Article 5(3) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, where access is a reserved matter, the outline application must show where the access point will be. In this case access would be shared with existing access to No 75.
3. The submitted plans show a single storey, two bedroom bungalow. These are indicative of only one way in which the site could be developed, although the application form clearly states the proposal is for a two bedroom unit.
4. As part of the appeal, it has been confirmed that water from the appeal site would discharge to the Christchurch Waste Water Treatment Plant and would therefore discharge within the River Avon catchment area. Additional residents would also have the potential to create recreational pressure and affect air quality.
5. For these reasons the proposal, alone or in combination with other plans or projects, has the potential to affect the New Forest, Dorset Heathlands, Solent and Southampton Water and River Avon Special Areas of Conservation, Special Protection Areas and Ramsar sites (the protected sites).

Main Issues

6. The main issues are:
 - whether or not the proposed dwelling would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2023 (the Framework) and any relevant development plan policies;

- whether or not the spatial strategy would support a dwelling in this location;
- the effect of the dwelling on the character and appearance of the area; and
- the effect of the proposal on the integrity of protected sites.

Reasons

Green Belt

7. The appeal site and adjoining dwellings to either side are in the South West Hampshire Green Belt. Policy ENV2 of the New Forest District Local Plan 2016-2036 Part 1: Planning Strategy outside the New Forest National Park 2020 (the Planning Strategy) seeks to protect the openness and permanence of the Green Belt in accordance with national planning policy. Paragraph 154 of the Framework states that the construction of new dwellings should be regarded as inappropriate development in the Green Belt unless one or more specified exceptions apply. The exception at Paragraph 154e) provides for limited infilling in villages.
8. Number 75 Burley Road is in a short row of dwellings between Bockhampton and Bransgore, three properties away from the defined built-up area of Bransgore. The appeal site is part of the garden of No 75. Although set in quite spacious plots this row of dwellings flags up the approach to the more intensively developed village.
9. The Framework does not specify what a village is and there is no formal definition of "infill" in the Framework. A court judgement¹ has confirmed that settlement boundary lines in the development plan are material considerations, but are not necessarily determinative as to whether a site is within a village or not for the purposes of considering infill development in the Green Belt. The decision-maker must decide this based on the circumstances on the ground.
10. I acknowledge that the row of dwellings were retained within the Green Belt in the last review of Green Belt boundaries on the grounds that the rear gardens of properties on West Road provided a more defensible boundary. However, the rear boundaries of the appeal site and neighbouring properties are also quite clearly defined by hedges/fences and the proposed development would not extend beyond this line. There are no properties opposite and Burley Road provides a clear demarcation on the south side. As a garden and dwelling in a row of other dwellings in this case I judge the site physically and functionally relates more to the village than to the agricultural land of the surrounding countryside. I remain of this view even taking into account that there are no buildings to the rear of the site.
11. The appeal site is between other dwellings and would be relatively small. A single small dwelling would fill a gap in an otherwise built-up row. I therefore consider the proposal would amount to limited infilling in terms of the exception at Paragraph 154e) of the Framework. I conclude the proposed development would not be inappropriate development within the Green Belt and should not be regarded as harmful to the openness or purposes of the Green Belt. There would therefore be no conflict with Policy ENV2 of the

¹ Julian Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195

Planning Strategy or those principles of the Framework that seek to protect the Green Belt by preventing urban sprawl. As the scheme would not be inappropriate development there is no need for me to consider the effect on openness of the Green Belt or whether there are other considerations which would amount to very special circumstances.

Spatial strategy

12. The spatial strategy seeks to meet most development needs within settlement boundaries and to conserve and enhance the countryside. The appeal site is outside the defined built-up area of Bransgore so new housing development is generally restricted under the spatial strategy.
13. Policies HOU5 of the Planning Strategy and DM20 of the New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management 2014 (the SDM) together state that new residential development outside defined settlement boundaries will only be permitted where this is to meet an identified need of local people for affordable housing or is for an agricultural or forestry worker's dwelling neither of which apply in this case.
14. Bransgore is defined as a main village under Policy STR4 of the Planning Strategy, the middle tier of the settlement hierarchy, with a limited to moderate range of services. The site is on a relatively busy main route into the village and is not isolated. Walking or cycling seems unlikely to be a preferred day to day means of transport given there is no footpath outside the site and traffic speeds are relatively high.
15. For the above reasons, I conclude that the spatial strategy would not support a dwelling in this location and there would be conflict with the development plan in this respect.

Character and appearance

16. The immediately adjoining properties are a mix of houses and bungalows with direct access to the highway and varying distances to boundaries. The proposed dwelling would share the access with the host bungalow and its front curtilage would adjoin the highway. In these ways the development would conform to the adjoining pattern of development.
17. The appeal site is relatively flat and at a slightly higher level than the road. There is a post and rail fence along the front boundary. It is predominantly grass with some trees and shrubs and a number of outbuildings.
18. Introducing a dwelling would undermine the spaciousness which is part of the character of the appeal site. However, this would be relatively limited as the proposal is for a small single storey dwelling. The bungalow with dormer windows at No 75 is set well back from the edge of the highway. No 73 to the west is an extensive two storey house positioned much nearer to the highway. Subject to an appropriate design and siting, including retaining gaps to the side boundaries, a modest dwelling of a scale similar to that shown on the illustrative plans would bridge the gap between No 75 and No 73. The Council would have control over scale and siting at the Reserved Matters stage and, this in combination with appropriate landscaping, would ensure that development would not be unduly urbanising.

19. For these reasons I conclude that although there would be some reduction in spaciousness there would be relatively little material harm to the overall character and appearance of the area as a result of the proposal. In this respect there would be some conflict with that part of Policy DM20 of the SDM that seeks to ensure dwellings in the countryside are of an appropriate design, scale and appearance but this would be relatively minor harm.

The effect on protected sites

20. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) and as "competent authority" I am required to undertake an Appropriate Assessment of the development on the basis of its Likely Significant Effects on the protected sites.
21. The Solent sites are unique and complex marine and estuarine habitats that support flora, including specialist plant species, and varied fauna and is one of the most important sites for wildlife in the UK and is internationally important for migratory birds. The New Forest is an internationally important area for its wildlife and birds, in particular nightjar, warblers, woodlark, hen harrier, honey buzzard, and hobby. The River Avon is considered to be one of the most bio-diverse river systems in lowland Britain, supporting a very rich flora, fish and invertebrate fauna. The Dorset Heathlands are important habitats for birds, invertebrate communities, sand lizards and smooth snakes.
22. Natural England advises that high levels of nitrogen and phosphorus input to the Solent and River Avon is causing eutrophication and visitor useage disturbs habitats and species in the New Forest. An additional dwelling would be minimal on its own. However, in combination with other plans and projects, it would result in a net increase in population which would introduce additional wastewater which could increase the levels of nutrients expelled into the water environment so have a Likely Significant Effect on water quality, especially that of the River Avon and the Solent, and by way of increased recreational pressure and vehicle pollution particularly in the New Forest and the Dorset Heathlands.
23. The Council has schemes in place for nitrate and phosphate offset credits for the permanent cessation of the fish farming use at Bickton and requires a set financial contribution per dwelling to address recreational and air quality impacts in the New Forest.
24. A deed by way of a legal agreement under s106 of the Town and Country Planning Act 1990 (the s106 Agreement) was submitted with the appeal to address matters of recreational and monitoring of air quality impacts. This accords with the Council's adopted strategies² which aim to enable residential development to proceed by setting out a strategy to ensure that the effects of development, either alone or in combination with other plans or projects, does not have an adverse effect on the integrity of internationally designated sites. The Council has confirmed this addresses the second reason for refusal and satisfies Policy ENV1 of the Planning Strategy. I find no reason to doubt that the deed meets the CIL Regulations and I see no reason to come to a different view to the Council.

² The New Forest District Council Mitigation for Recreational Impacts on the New Forest European Sites Supplementary Planning Document (2021), The Air Quality Assessments in New Development Supplementary Planning Document (2022) and the Bird Aware Solent Strategy 2017, Phosphorus Mitigation Strategy/the Avon Nutrient Plan

25. Natural England raise no objections provided sufficient credits from the Bicton off-set scheme are available and secured. It has been confirmed that there is currently more than 500kg of phosphate mitigation available as of October 2024 which would be sufficient to mitigate several thousand houses. The Council are confident this mitigation could be secured prior to occupation by way of a Grampian style condition and in this instance Natural England raise no objection in principle to this approach. Given the certain availability of credits to secure the required mitigation I see no compelling reason to reach a different conclusion.
26. I conclude that subject to the provisions of the s106 agreement and the imposition of a suitably worded planning condition there would be no adverse residual effect on the integrity of the protected sites from the proposal, either singly or in combination with other development. The proposal would therefore comply with the requirements of the Habitats Regulations. I therefore find no conflict with Policy ENV1 of the Spatial Strategy in this respect.

Planning Balance

27. The spatial strategy would not support a dwelling in this location and there would be a reduction in the spaciousness of the site albeit relatively little harm to the overall character and appearance of the area. In these respects there would be conflict with the development plan taken as a whole.
28. The Council is able to demonstrate a deliverable housing land supply of some 3.1 years, which is notably lower than the expected five years. Given this notable shortfall the presumption in favour of sustainable development, as set out in Paragraph 11(d) of the Framework, is engaged and planning permission should be granted unless 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.
29. I have found that the proposal would not be inappropriate development in the Green Belt and that the scheme is acceptable in terms of the Habitats Regulations. There are therefore no policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development.
30. The proposal would make efficient use of land, provide an additional, much needed, dwelling which could be built relatively quickly, and there would be economic benefits during the construction period and spend in the local economy. These are all benefits which are supported by the Framework. The dwelling would infill a space between dwellings and would be within a reasonable distance of a range of facilities within the village. Although the private vehicle is likely to be the preferred mode of day-to-day transport the village facilities are accessible via a short drive which is not unreasonable in a generally rural area. These benefits are worthwhile but given the small scale of the proposed collectively I attribute them moderate weight in favour of the proposal.
31. In terms of harms, the site is located in the countryside for planning purposes. However the policies which limit open market residential development to within the settlement boundaries appear not to be able to deliver a Framework required supply of housing land. In this case the site is reasonably close to the settlement boundary and I consider that the development would appear as an

infill forming an outlying part of the village. Given the shortfall of housing land supply the conflict with the development plan policies for the distribution of housing and the location beyond the settlement boundary I afford limited weight against the proposed dwelling.

32. The harm to the character and appearance of the area would be relatively modest and with an appropriate design and layout at reserved matters stage the scheme would not be unduly harmful in its context albeit that I consider there would be some conflict with development plan policies in this regard.
33. The combined harms would be relatively minor and this compares with the benefits of the scheme to which I ascribe moderate weight in favour of the proposal.
34. Taking all the above into account I conclude that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole. As such the proposed development benefits from the Framework's presumption in favour of sustainable development and this weighs heavily in favour of the proposal.
35. The scheme would not comply with the development plan when considered as a whole. However material considerations, including that the scheme would constitute sustainable development within the meaning of the Framework, indicate that a decision should be made other than in accordance with the development plan. In these circumstances the scheme is acceptable and planning permission should be granted.

Conditions

36. I have considered the conditions put forward by the main Parties against the tests in the Framework and the Planning Practice Guidance. Where appropriate I have altered the wording for clarity and precision. In addition to the standard conditions relating to outline schemes, for certainty it is necessary to identify the plans to which the decision relates, but only insofar as they relate to trees (1-4).
37. In the interests of biodiversity and for maximum effectiveness it is necessary for details of ecological enhancements/biodiversity net gain on the site and measures for water and energy efficiency to be submitted with the reserved matters application. To avoid disturbance of birds during the nesting season it is necessary to control the timing of clearance works but it would be unreasonable to time limit development once clearance had taken place (5, 10).
38. Given the potential archaeological interest of the site, further evaluation and recording of any finds is required, (6-7).
39. To ensure satisfactory infrastructure provision a scheme for the provision of charging points for electric vehicles is necessary (8). In the interests of health and safety and to minimise flood risk a system for sustainable surface water drainage is necessary (9).
40. In the interests of the integrity of protected sites it is necessary to ensure the delivery of the scheme of phosphate mitigation (11).

41. The Council proposed a condition that would remove some of the permitted development rights for dwellings. However, even though the site is relatively small there is little evidence to demonstrate that such rights if implemented would lead to an unacceptable effect on the visual qualities or character of the area. Without such justification, such a condition would be unnecessary and so it has not been imposed.

Conclusion

42. For the reasons given above the appeal should be allowed.

S Harley

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale "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 three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development permitted shall be carried out in accordance with the following approved plans:
 - RNipc/389/TCP/1 - Tree Constraints Plan
 - RNipc/389/TPP/1 - Tree Protection Plan
- 5) The details required pursuant to condition 1 shall be accompanied by proposals for ecological enhancements/biodiversity net gain and for water and energy efficiency on the site.
- 6) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions, and:
 - a) The programme and methodology for site investigation and recording
 - b) The programme for post-investigation assessment
 - c) Provision to be made for analysis of the site investigation and recording
 - d) Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - e) Provision to be made for archive deposition of the analysis and records of the site investigation
 - f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation

The development shall be undertaken in accordance with the approved details prior to the occupation of the dwelling.
- 7) The development shall not be occupied until the site investigation and post-investigation assessment have been completed in accordance with the programme set out in the Written Scheme of Investigation, approved under condition 6, and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 8) Before first occupation of the dwelling hereby approved, a scheme for the provision of infrastructure and facilities to enable the installation of charging points for electric vehicles to serve the new dwelling shall be submitted to and approved in writing by the local planning authority. The

approved scheme shall be provided before the approved dwelling has been occupied and shall thereafter be retained in accordance with the approved details.

- 9) Before first occupation of the development hereby approved, a surface water sustainable drainage system scheme (SuDS) to accommodate the run-off from all impermeable surfaces including roofs, driveways and patio areas on the approved development such that no additional or increased rate of flow of surface water will drain to any water body or adjacent land and that there is capacity in the installed drainage system to contain below ground level the run-off from a 1 in 100 year rainfall event plus 30% on stored volumes as an allowance for climate change as set out in the Technical Guidance on Flood Risk to the National Planning Policy Framework shall be submitted to and approved in writing by the local planning authority.

Infiltration rates for soakaways are to be based on percolation tests in accordance with BRE 365, CIRIA SuDS manual C753, or a similar approved method. In the event that a SuDS compliant design is not reasonably practical, then the design of the drainage system shall follow the hierarchy of preference for different types of surface water drainage system as set out at paragraph 3(3) of Approved Document H of the Building Regulations.

The drainage system shall be designed to remain safe and accessible for the lifetime of the development, taking into account future amenity and maintenance requirements. The drainage system shall be implemented in accordance with the approved details and shall be retained thereafter.

- 10) No site clearance shall take place between February and August.
- 11) The development shall not be commenced until proposals for the mitigation or offsetting of the impact of phosphorus arising from the development on the River Avon and Southampton and Solent protected sites, including mechanisms to secure the timely implementation of the proposed approach, have been submitted to and approved in writing by the local planning authority. Such proposals must:
- a) Provide for mitigation in accordance with the Council's Phosphorus Mitigation Strategy (or any amendment to or replacement for this document in force at the time), or for other mitigation which achieves a phosphorous neutral impact from the development.;
 - b) Provide details of the manner in which the proposed mitigation is to be secured. Details to be submitted shall include arrangements for the ongoing monitoring of any such proposals which form part of the proposed mitigation measures.

The development shall be carried out in accordance with and subject to the approved proposals.

End of Schedule