



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: 28 October 2024

Appeal Ref: APP/P2114/W/23/3332365

The Shieling, New Road, Wootton, Isle of Wight PO33 4JW

- 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 Dr Akundi & Ande against the decision of the Isle of Wight Council.
 - The application Ref is 22/01947/FUL.
 - The development is a proposed dwelling, with parking and gardens.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellants have submitted 2 no. signed Unilateral Undertakings. The first Unilateral Undertaking (UU1) dated 9 April 2023 would provide financial contributions towards habitat mitigation and affordable housing. The second Unilateral Undertaking (UU2) dated 5 April 2024 would make an additional financial contribution towards habitat mitigation to reflect cost increases since UU1 was signed. The Council has approved UU1 and UU2 and confirmed they address its reasons for refusal no's 2 and 3, relating to the effect on the proposal on the integrity of the Solent and Southampton Waters Special Protection Area (SPA) and affordable housing provision, the appeal has been determined on this basis. I shall return to UU1 and UU2 later in my decision.
3. Following the Council's notice of decision, the National Planning Policy Framework (the Framework) was revised on 19 December 2023, after the appeal was submitted, both main parties have had the opportunity to make comments on the revised Framework and these have been taken into account in my decision.
4. 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 also had the opportunity to make submissions regarding both documents in the context of the appeal proposal, which have been taken into account in my determination of the appeal.
5. The appellants have submitted information with their appeal; in regard to reason for refusal no.4, shading plans and a statement from Wayne Isaacson Tree Consultancy Ltd dated 20 October 2023 (TS); and in response to reason for refusal no.5. a letter from e3S Consulting dated 24 October 2023 (EL)

regarding ecology and protected species. The Council and other interested parties have had the opportunity to comment on these during the appeal process. I am therefore content that there would be no unfairness to any party by accepting this information. The appeal has been determined on this basis.

Main Issues

6. In view of the above and the Council's notice of decision, the main issues with this appeal are:
- The suitability of the site for housing with particular regard, to its accessibility to local shops, services and facilities;
 - The effect of the proposal on trees;
 - The effect of the proposal on ecology and protected species; and,
 - Foul drainage.

Reasons

Suitability of the site for housing

7. The appeal site includes the property known as The Shieling, along with land surrounding it, served by an existing vehicular access from New Road. The pavement leading along New Road ends some distance from the appeal site, and, although there are areas of the road with markings on for pedestrians to use, the immediate vicinity of the appeal site does not have any pedestrian facilities. In addition, I saw on my site inspection there are mature trees to both sides of the road near to the appeal site, and there are bends in the road and an incline in the road level, when travelling towards the appeal site from nearby Wootton Bridge.
8. Policy SP1 of the Island Plan, Isle of Wight Core Strategy (including waste and minerals) and Development Management, Development Plan Document, dated March 2012 (IP) states that new residential development outside of, or not immediately adjacent to defined settlements will not be supported, unless there is a local need. No case for a local need to reside in this precise location has been made in relation to the appeal proposal. Although not referred to in its notice of decision, both IP Policies DM17 and SP7 support development that increases travel choice, with alternative means of travel other than by car. In addition, paragraph 109 of the Framework requires new development to have a genuine choice of transport modes.
9. Wootton Bridge (the nearest settlement to the appeal site) is defined by IP Policy SP1 as a Rural Service Centre. Although there are some sporadic buildings nearby and noting the appeal decision¹ on the adjoining land for 5 no. dwellings, the appeal site is not within or adjacent to a settlement, with intervening areas and wooded land separating it from Wootton Bridge. In view of this, and in accordance with relevant caselaw² the appeal site is to be regarded as isolated in the language of the Framework. As such I regard the appeal site to be within the countryside.

¹ Ref. APP/P2114/W/22/3312325

² Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018]

10. Wootton Bridge contains a reasonable range of local shops, services, and facilities, including a primary school, but most of these would be a mile or so from the appeal site, and some farther away. It is also acknowledged that there is a regular bus service operating³, including from High Street and Kite Hill, which at their nearest are also said to be some 1 mile or so from the appeal site, although it is acknowledged that the bus network would provide connectivity across the island and to ferry terminals.
11. Nevertheless, pedestrian journeys to and from the bus stops, would be along partly unlit and at times shaded roads, containing gradient changes and bends in the road, with little warning of oncoming traffic, and at times no, or limited pedestrian refuge points, which would not be particularly desirable. Whilst some occupiers may use a bicycle to travel, not all occupiers would want to use this method of travel. Notwithstanding that there could be a choice for sustainable modes of transport, it is more likely than not, future occupiers of the proposed dwelling would require a car to access local shops, services, and facilities in the nearest settlement and beyond, due to the isolated location of the appeal site. Nor am I convinced that the location proposed would offer a genuine choice of transport modes that most occupiers would want to use, as such it would be an unsustainable location for a new dwelling.
12. The appellants have argued occupiers of the proposed dwelling would contribute to and use local services and facilities. However, as I have found that the appeal site is not within a settlement, the support offered by paragraph 83 of the Framework regarding the vitality of rural communities and how development in one settlement could support services in a nearby settlement, would not apply in this case.
13. It is also acknowledged that planning permission⁴ was granted for a building of similar appearance and position at the appeal site in 2018 for use as a holiday cottage. I have not been made aware that a lawful commencement occurred on that permission, as such I regard it to have lapsed. Furthermore, as it was for holiday use it has different considerations to a permanent dwelling and was most likely considered under a separate set of policies. Its occupiers would also most likely be there on holiday, rather than being permanent occupiers that need to regularly access local services and facilities.
14. Both main parties have drawn my attention has been drawn to other decisions in support of their cases, which I have carefully considered. The appeal decision⁵ on the adjoining site, which like the appeal site it previously had a permission for tourism development, related to 5 no. dwellings. Although it was closer to Wootton Bridge than the appeal site, it was found to conflict with IP Policy SP1. Although in that case the planning balance led the inspector to allow the appeal.
15. In terms of the Upton decision⁶, although that site was separate from Ryde and there was no pedestrian path along the road, there was a bus stop within 70 metres of the appeal site and there were said to be pedestrian refuge points along the verge, and it was said to be located on the National Cycle Route. As

³ Bus services 4, 9, 49 & 59

⁴ Ref. P/00307/18

⁵ Ref. APP/P2114/W/22/3312325

⁶ Ref. APP/P2114/W/19/3228085

such its location is distinctly different to the appeal proposal and has not led me to conclude differently.

16. It is noted that the Council in its decision⁷ found the location of the site at 1 Warwick Rise, also on New Road but much closer to Wootton Bridge than the appeal site, to be suitable for housing. However, this has not altered my findings on this appeal.
17. The Council have referred me to an appeal decision⁸ at Shalfleet, which appears to have some similar circumstances to the appeal scheme relating to its lack of footway and street lighting. Although, I am unsure of its distance to the nearest settlement, and it is noted the Inspector in that case did not find it to be isolated. As such I cannot be certain it is directly relevant to the appeal scheme before me. Moreover, it is for the decision maker in each case to assess the merits of the proposals according to the circumstances of that particular case.
18. I therefore conclude that the appeal site's location would not be a suitable site for new housing having particular regard to its accessibility to local shops, services and facilities, and it would conflict with CS Policies SP1, DM17, and SP7 as outlined above. In addition, there would also be conflict with paragraph 84 of the Framework, insofar as it seeks to prevent isolated new homes in the countryside that are away from settlements.

Effect on trees

19. The appeal site contains many trees and there are woodland areas nearby, which collectively contribute positively to the verdant and landscaped appearance of the immediate area. The Tree Report, Arboricultural Impact Assessment, dated October 2022, prepared by Wayne Isaacson (AIA) identifies a row of Lombardy Poplar trees to one side of the location of the proposed dwelling, they are said to be some 17 metres high with 40 years plus of future growth potential. In addition, there is also a mixed group of semi-mature trees (G377) some of which would be located very close to the rear of the proposed dwelling, and said to be some 6 metres tall with up to 20 years growth potential.
20. There is no dispute between the Council and the appellants arboriculturist that the trees in this area contribute positively to the character and appearance of the area. Nor is there objection between the parties regarding the loss of 1 no. Poplar Lombardy tree and 7 no. fruit trees to accommodate the proposed dwelling. The dispute between the parties relates to possible shading from the retained trees, the effect of falling branches and whether as a result, there would be pressure to lop or fell the trees in the future.
21. The TS states the risks posed by the trees near to the proposed dwelling would not be unacceptable, in accordance with methods used to assess such effects. However, this limited information does not fully explain the risks posed, including from their future growth potential. It is also not certain future occupiers would accept the existing risks posed by the close proximity of the trees, creating pressure to fell or prune them. Moreover, the TS does not appear to take full account of the potential movement of the tall slender Poplar Lombardy trees in times of strong winds, and any potential for falling branches

⁷ Ref. 22/01930/FUL

⁸ Ref. APP/P2114/W/21/3284066

- arising, given they are said to be some 3 metres from the proposed dwelling. Even accepting that the appeal scheme has been designed around the existing trees, account still needs to be taken of their future growth potential and whether future occupiers would likely want to lop or fell them.
22. The submitted shading plans indicate the proposed dwelling would have the greatest shading from nearby trees in the winter months, particularly January and October, with less shading in April and July. Nevertheless, there would be shading of the proposed dwelling, including across its expansive glazed rear elevation, which would likely add to pressure for future occupiers to lop or fell the trees to avoid such shading. In addition, with the future growth potential of the Lombardy Poplars, and the trees known as G377, the shading would likely get significantly worse than shown on the shading plans in future years.
23. Furthermore, it is unclear what the precise domestic curtilage would be provided for the proposed dwelling, as there is no boundary delineated between it and The Shieling. Consequently, it could have a limited curtilage heavily constrained and shaded by the existing trees, further adding to pressure for future lopping and felling of the nearby trees.
24. It is acknowledged that the tree group G377 are not readily visible from public vantage points and are distinct from the woodland trees beyond the appeal site. In addition, some are said to be diseased, with some others expected not to grow significantly more. Nevertheless, this does not diminish their contribution along with other nearby trees and the woodland area to the verdant character and appearance of the area.
25. It is said the proposed development is near identical to the previously approved holiday cottage⁹. Be that as it may, for the reasons outlined above, that is not an extant permission and carries limited weight in my assessment on the proposal's effect on existing trees. Moreover, the occupiers of a holiday cottage would likely be short-term and transient and at different times of year, so instances of shading would not have long term effects, which would be wholly different to the effect on year-round permanent occupiers.
26. Whilst some occupiers may like to live amongst trees, including tall trees near their property, others may not. In addition, I have no evidence that any health and wellbeing benefits from trees being near to dwellings, require them to be in such proximity, or that passive ventilation could not be achieved through other means than tree shading. Neither is there any substantive evidence pertaining to the appeal scheme that its market value would be higher due to the existing trees.
27. For the reasons outlined above the proposal would likely lead to pressure to fell or prune nearby trees that could harm the character and appearance of the area. In this respect the proposal conflicts with the relevant parts of IP Policies DM2 and DM12 that amongst other things seek to ensure new development conserves and enhances the Island's environment and landscape. In addition, the proposal would also conflict 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.

⁹ Ref. P/00307/18.

Ecology and protected species

28. The appellants Preliminary Ecological Assessment dated May 2022, prepared by e3S Consulting (PEA) stated that the vegetation on-site was diverse. It also says that most of it is understood to be retained, including deadwood where possible, and if its removed, it should be placed in a shady area as close to its original position. It also states that there are records of dormice within 1km of the appeal site, and that a visual survey on-site found potentially suitable habitat in the way of food and connectivity to the woodlands surrounding the site, with the trees and scrub said to be able to supply dormice with food necessary to sustain a population. The PEA recommended a fingertip search for dormice where any removal of scrub and trees is required. The recommendations of the PEA also require as much scrub, trees, and deadwood to be retained on-site where possible.
29. The PEA's recommendation for a dormice survey, which is a protected species, would need to be undertaken in advance of a decision, in accordance with Paragraph 99 of Circular 06/2005, which is clear that a precautionary approach should be taken in respect of protected species, and surveys should be undertaken prior to the grant of planning permission, to take full account of the presence of protected species, which are an important material planning consideration.
30. Following the Council's notice of decision, the EL states when the PEA was undertaken the ecologist did not have a copy of the proposed plans and their earlier focus was to the west of the appeal site. It further states "It is understood that the site has recently been cleared, as such no scrub or vegetation is currently present within the proposed development site footprint, fruit trees (orchard) as previously identified within the PEA remain and surrounding vegetation remains in situ and as described within the PEA. Again, no evidence of protect species was identified during the updated site walkover." It goes on to say that in view of this, a fingertip search for dormice is no longer required. Although it recommends a staged clearance approach for any additional vegetation and appropriate fencing be place, and that it says the recommendations within the PEA are still valid.
31. However, on my site inspection, which was some 11 months after the EL was prepared, I saw that the appeal site was not as shown on the photographs submitted with the EL (after clearance works). Moreover, perhaps due to the intervening time, I observed that the appeal site contained vegetation, including some deadwood, similar to the conditions referred to in the PEA as possibly providing suitable habitat for dormice.
32. Notwithstanding the EL, I cannot be certain, based on the information contained in the PEA and my own site observations that dormice are not present at the appeal site. Furthermore, I do not have any dormice survey before me, and there is no indication that one was undertaken by the appellants before they cleared part of the appeal site. As such, I do not have sufficient information to ascertain what if any, effect the proposal would have upon protected species that may be using the appeal site.
33. Taking into account the EL, particularly its comments on the position of other trees in the wider area; the bat species said to be most common in the area; the horseshoe shape of the proposed dwelling; the use of LED lighting; and that the type of glazing could be subject of a condition if I were minded to

allow the appeal, I am satisfied there could be suitable mitigation secured to minimise the effects on bats.

34. In respect of other protected species, no further surveys were recommended in the PEA, and I see no reason to disagree in that respect. However, in view of the site clearance works that have been undertaken already, it is unclear whether all the mitigation measures contained in the PEA, and suggested to be conditioned, such as retention of vegetation and a staged approach to scrub clearance, would still be relevant, given that clearance works were undertaken after the PEA was prepared.
35. I therefore conclude based on the information before me, that the proposed development could be harmful to protected species, and as a result the proposal would conflict with the relevant parts of IP Policies DM2, DM12 and SP5, that collectively seek to protect the Island's habitats and biodiversity and avoid development that has an adverse effect on the natural environment. In addition, the proposal is also contrary to paragraphs 180(d) and 186(a) of the Framework, which states that development should contribute to, and enhance the natural and local environment and planning permission should be refused where significant harm to biodiversity cannot be avoided, or appropriately mitigated.

Foul drainage

36. It is understood the Isle of Wight Council Position Statement: Nitrogen neutral housing development, dated January 2024 (PS) has been issued, partly in response to nitrate enrichment to the Solent International Sites, Solent Maritime SAC, SPA and Ramsar. It states that Sandown Wastewater Treatment Works (SWwTW) outfalls into the English Channel and developments that will connect to SWwTW do not have to demonstrate nutrient neutrality.
37. In this case, foul wastewater is proposed to be drained to a sealed tank at the appeal site, before being collected by a tanker and taken to the SWWTW. The PS states "Developments where the only waste management option is to connect to existing or new sealed cess pits will not need to demonstrate nutrient neutrality. Southern Water have confirmed that the Sandown treatment plant is the only site on the Island accepting this type of waste and therefore does not need to be subject to any Habitat Regulations Assessment (HRA)." The PS goes on to say in such circumstances, a planning condition could be imposed to secure such foul drainage. In light of this, if I were minded to allow the appeal a suitably worded condition could be imposed, and it would not be necessary to undertake an Appropriate Assessment, nor would nutrient neutrality need to be demonstrated.
38. It is noted that the PS states that a connection to a sealed system should only be proposed if it can be demonstrated that either connection to the mains sewer or use of a Package Treatment Plant is not possible or practicable. However, the Inspector when determining the appeal on the adjoining site¹⁰, found the same method of foul water drainage as proposed in this case was acceptable. This is a significant material consideration to which I attach weight. In view of this, and that the proposal would be consistent with the objective of the PS of ensuring foul water is drained into the English Channel to protect the

¹⁰ Ref. APP/P2114/W/22/3312325

Solent International Sites, Solent Maritime SAC, SPA and Ramsar, the proposed method of foul water drainage is acceptable.

39. I therefore conclude that subject to a suitably worded condition the proposed method of draining foul water is acceptable and would avoid harmful effects upon the integrity of international, national and local designations, and that it would comply with IP Policies SP5 and DM12 that amongst other things seek to protect and conserve the Island's natural environment and ensure new development avoids both direct and indirect adverse effects upon the integrity of designated sites.

Other Matters

Affordable Housing

40. UU1 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 the occupation of the proposed dwelling. IP Policy DM4 and the Isle of Wight's Affordable Housing Contributions Supplementary Planning Document, adopted March 2017 (AHSPD) requires a financial contribution towards affordable housing provision, from new single dwellings such as this proposal.
41. Paragraph 65 of the Framework, the Planning Practice Guidance (PPG) and the Written Ministerial Statement of November 2014 (WMS), all say affordable housing contributions should not be sought for residential developments of the scale set out in the appeal proposal. However, noting the Court of Appeal judgement on this matter referred to in the AHSPD, the information relating to the chronic affordable housing need on the Isle of Wight, and the difficulty meeting it through its supply of market housing, its particular demographics, and the affordability of market housing, are arguments that attract significant weight.
42. 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, and would outweigh the WMS, and the guidance within both the Framework and PPG in this case. The obligation within the UU1 in this regard is reasonable and necessary to make the development acceptable and is related in scale and kind to it, and it meets the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regs.), and paragraph 57 of the Framework.

Solent Mitigation

43. The appeal site is within the buffer zone of influence for the SPA. The proposal would result in a net gain of residents and, in the absence of mitigation, together with other plans and projects, would be likely to increase visitor pressure on the SPA and lead to further disturbance to its habitats and the birds it supports. Natural England have advised that the SPA is currently in an unfavourable condition because of excessive levels of nitrogen and phosphate, which has led to a detrimental impact on the habitats and species of birds to which the designation relates. It is therefore necessary to ensure that developments will not add to the current unfavourable state of the SPA. UU1

and UU2 combined would make contributions as required by the Solent Recreation Mitigation Strategy, dated December 2017, to address such impacts. However, in view of my conclusions on the main issues it is not necessary for me to carry out an Appropriate Assessment or to consider these matters further.

Other considerations

44. The appellants have stated that the appeal site is well screened from public vantage points; it's not in an Area of Outstanding Natural Beauty; it would use a modern design and materials that complements the site; there would be no unacceptable effects upon living conditions of nearby occupiers; that there are no unacceptable highway safety impacts; that the site is within Flood Zone 1 and there are no unacceptable flood risks identified; and that a cellular confinement system could be used to protect trees. These points are noted, and they are mostly requirements for any well-designed development, even collectively these points are neutral factors that neither weigh in favour or against the proposal.
45. The appellants have made comments about the Council's handling of the application, these are matters between the respective parties and go beyond my consideration of the merits of the appeal scheme.
46. I have had regard to objections received from local residents and others, raising issues in addition to the above main issues including, but not limited to the following; the previous planning history on and near the appeal site; external lighting; environmental impacts; the effect on the character and appearance of the area; the loss of a greenfield site; the effect on local services; and whether there is a conflict with local planning policies, including those relating to tourism. However, I note that these matters were considered where relevant by the Council when it determined the planning application. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Planning Balance and Conclusion

47. The information provided by the Council says that it has an emerging local plan that has been to Regulation 18 stage and includes a policies map and proposed housing allocations, which in accordance with paragraph 226 of the Framework, requires it to have a 4-year supply of housing. The Council's submitted 'Five Year Land Supply Annual Position Statement on 1st April 2021' indicates that it has 4 years supply of housing at that date. However, it has also said that its Housing Delivery Test score was 66% in 2022. Therefore, it is accepted by the Council that the presumption in favour of sustainable development as set out in paragraph 11 of the Framework applies.
48. As no identified conflict with policies referred to in footnote 7 of paragraph 11 of the Framework applies in this case, paragraph 11 d) ii is engaged, which states permission should be granted unless the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
49. The benefits of the proposal include the provision of one additional dwelling, which would contribute towards the Isle of Wight's overall supply of housing

and help Government's objective of significantly boosting housing supply. There would also be economic benefits associated with the construction of the development and likely benefits from its occupation and the contribution from future occupiers to the local economy and services. The proposal would also contribute towards affordable housing provision. There would be some limited choice of travel other than by car, but this would mostly be undesirable due to the distance and road conditions. Given the small scale of the proposal, the contribution of these benefits, even collectively in this particular case, would be limited, particularly to the Isle of Wight's overall housing supply.

50. Against these benefits is the harm that would be caused from providing a new dwelling in an unsustainable location away from facilities and services, making journeys by car most likely for future occupiers with the road in part being undesirable for pedestrians, conflicting with paragraph 84 of the Framework. There is also insufficient information submitted to properly consider the effects of the proposals upon protected species that may be using the appeal site, contrary to paragraphs 180(d) and 186(a) of the Framework. The proposal would also likely lead to the felling or lopping of trees that positively contribute to the character and appearance of the area, giving rise to conflict with paragraph 135 of the Framework. In these circumstances, I give the identified conflict weight.
51. Accordingly, when assessed against the policies in the Framework taken as a whole, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
52. The proposal conflicts with IP Policies SP1, SP5, SP7, DM2, DM12, and DM17, which I regard to constitute conflict with the development plan when considered as a whole, and there are no material considerations, including the Framework's presumption of sustainable development, that would outweigh the conflict. For the reasons outlined above the appeal should be dismissed.

A Hunter

INSPECTOR