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# Appeal Decision

Site visit made on 2 October 2024

**by Juliet Rogers BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> October 2024**

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**Appeal Ref: APP/L1765/W/23/3333279**

**2 Rowash Cottages, Botley Road, Shedfield, Hampshire SO32 2HL**

- 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 Allen Prebble against the decision of Winchester City Council.
  - The application Ref is 23/01323/FUL.
  - The development proposed is the change of use to 4 No. flats.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since the Council determined the application a new version of the National Planning Policy Framework (the Framework)<sup>1</sup> came into effect. During the appeal, the main parties have had the opportunity to provide further comments on the revised Framework and, where received, I have taken them into account in my decision. I am satisfied no party would be prejudiced by determining the appeal accordingly.
3. The planning application form indicates that at the time of submission, the change of use had been completed. I observed this to be the case during my site visit. I have therefore determined the appeal retrospectively.

## Main Issues

4. The main issues are:
  - whether the proposed development would be likely to have a significant effect on the integrity of the Solent Special Protection Areas (the Solent) with particular regard to nitrate neutrality;
  - whether the proposed development would be likely to have a significant effect on the integrity of the Solent with particular regard to recreational activity; and
  - whether the appeal site is suitable for the development, with regard to the local development strategy and the Framework on the location of housing.

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<sup>1</sup> December 2023

## Reasons

### *Nitrate neutrality*

5. The appeal site is located within an area where foul water is distributed into the Solent via water treatment plants. The Solent comprises three Special Protection Areas (SPAs) which are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations).
6. The special interest of the Solent relates to its habitats which support large numbers of waders and wildfowl that spend the winter in the area. To ensure these habitats do not deteriorate, the Council's overarching objective is to protect and manage the Solent's qualifying features, as set out in their Position Statement<sup>2</sup>.
7. Achieving this objective is threatened by an increase in the population in the area and, in turn, an increase in the amount of wastewater draining into the Solent. This also increases the amount of pollutants or nutrients, such as nitrates and phosphates being discharged into the water which can affect its quality and result in a process known as eutrophication. This process speeds up the growth of certain plants damaging the habitat and threatening the aquatic ecosystem, leading to the removal of a valuable food source for the waders and wildfowl.
8. As a result of the development, the number of people living in the area and the amount of wastewater has increased. Consequently, the development, taken both in isolation and cumulatively with other projects, would be likely to have a significant adverse effect on the integrity of the Solent. As the competent authority, it is therefore necessary for me to conduct an Appropriate Assessment (AA) about this effect.
9. It has been suggested that a negatively worded condition could be imposed were I to allow the appeal. This would normally prevent the occupation of the development until an appropriate mitigation package is secured, following which a further AA would be necessary before the condition could be discharged. However, as the flats are already occupied, such a condition would not be reasonable as the development would be in breach of this condition from the outset.
10. I have also considered whether a condition which would require mitigation to be secured within a certain time limit of a positive decision letter would be suitable. Although the appellant has submitted an expression of interest form has been submitted to an offsite nitrate scheme, I have no further evidence before me confirming that such mitigation can and will be achieved.
11. Nevertheless, the Planning Practice Guidance (PPG) states that the use of a planning obligation, before granting planning permission, is the best way to deliver sufficient certainty for all parties. No such legal agreement has been provided as part of the appeal.
12. Without an approved mitigation package or an appropriate legal agreement, I must, therefore, adopt the precautionary principle embedded in the integrity test. I, therefore, conclude that the development would result in an adverse

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<sup>2</sup> *Position statement on nitrate neutral development*, February 2020 (Position Statement)

effect on the integrity of the Solent and would not accord with the Habitat Regulations. In the absence of the necessary mechanism required to secure appropriate mitigation measures, the development would be contrary to Policy CP16 of the LPP1<sup>3</sup> which supports development that maintains, protects and enhances biodiversity, including European Sites. It also conflicts with Chapter 15 of the Framework which seeks the protection and enhancement of habitats and biodiversity.

13. The decision notice refers to Policy CP15 LPP1 regarding this and the following main issue. However, as this refers more generally to Green Infrastructure assets, including blue corridors, it is not determinative in my decision.

#### *Recreational activity*

14. In addition to the increase in wastewater discharging into the Solent, an increase in the number of people visiting the area for recreational purposes places pressure on designated sites by causing erosion and disturbance to the habitats. The appeal site is located within 5.6km of the Solent, the distance people will reasonably travel to visit the coast and the development leads to an increase in the number of people within this area. Therefore, the development, when taken both in isolation and cumulatively with other projects, would be likely to have a significant adverse effect on the integrity of the Solent. In this circumstance, as the competent authority, I must conduct an AA in relation to this effect.
15. As part of the appeal, the appellant has provided a receipt from the Council showing a sum of £1,968.00 has been paid, This uses the planning application number as the reference. This was not, however, accompanied by the Upfront Solent Recreation Mitigation payment form. Moreover, the evidence before me indicates that this sum is more than the required contribution. As the payment form also constitutes a planning obligation, no legal agreement is in place specific to the development which obligates the Council to use the contribution exclusively to implement the proposals in the Interim Solent Recreation Mitigation Partnership Strategy<sup>4</sup>.
16. I, therefore, conclude that the development would result in an adverse effect on the integrity of the Solent and would not accord with the Habitat Regulations. It would be contrary to CP16 of the LPP1 which supports development that maintains, protects and enhances biodiversity. It also conflicts with Chapter 15 of the Framework which seeks the protection and enhancement of habitats and biodiversity, including internationally designated sites.
17. Reference is also made to Policy CP13 of the LPP1 in the Officers Assessment report in relation to this main issue, although not listed on the decision notice. As this policy relates to high-quality design it is not determinative in this case.

#### *Location*

18. The appeal site comprises one side of a semi-detached pair of cottages which, together with the adjacent Silverlake Garage and salvage yard and the Row Ash Bungalows, form a grouping of buildings on the northern side of the A334 Botley Road. Although within the Parish of Shedfield, this grouping is located

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<sup>3</sup> Winchester District Local Plan Part 1 – Joint Core Strategy (LPP1)

<sup>4</sup> Guidance for Applicants, August 2014

closer to the built form associated with the settlement of Curdridge. Neither Curdridge nor Shedfield has clearly defined settlement boundaries, either mapped in the LPP1 or on the ground. Nonetheless, given the distances between the main areas of built form associated with Curdridge and Shedfield and the appeal site, together with the intervening wooded areas, it is my planning judgment that the appeal site is located outside both settlements. Consequently, for the purposes of the local development strategy, the appeal site is located within the countryside.

19. Policy MTRA4 of the LPP1 restricts development in the countryside except in specific circumstances. Comprising the subdivision of a dwelling into four separate housing units, the appeal scheme does not meet any of these exceptions. It is, therefore, contrary to Policy MTRA4.
20. As highlighted above, since the LPP1 was adopted, the Framework has been updated, including open market housing exceptions in the countryside. In these circumstances, the Framework indicates that existing policies should not be considered out of date simply because they were adopted before any changes made to the Framework. However, it is appropriate to give them weight proportionate to their consistency with the Framework.
21. Where housing in the countryside is concerned, paragraph 84 of the Framework seeks to avoid the development of isolated homes unless one or more of a list of circumstances applies, including the subdivision of an existing residential building. It is not a blanket ban on all open market homes. Whilst Policy MTRA4 includes some similar exceptions to development in the countryside, open market housing, including those resulting from the subdivision of an existing dwelling is not permissible. As a result, Policy MTRA4 is not wholly consistent with the Framework. It is, therefore, appropriate for me to give it less than full weight in my decision.
22. In considering the relevance, application and definition of paragraph 84 of the Framework, my attention has been drawn to the Bramshill<sup>5</sup> and Braintree<sup>6</sup> cases. These establish that the key assessment is whether or not a site is physically separate or remote from a settlement, rather than other dwellings and that this will be a matter of fact and planning judgment for the decision maker. As highlighted above, I have concluded that the site is outside a settlement. As a result, it is remote from the settlements of Shedfield and Curdridge and, therefore, falls within the definition of isolated homes as per paragraph 84.
23. Consequently, I conclude that the appeal site is suitable for the development, with regard to the Framework and its approach to avoiding isolated homes in the countryside. Whilst the development conflicts with Policy MTRA4 of the LPP1, I have found that this policy is not wholly consistent with the Framework. Therefore, I attribute limited weight to this conflict.
24. Policy MTRA3 of the LPP1 is also included in the decision notice. This policy sets out the forms of development which may be supported within specific settlements, including both Shedfield and Curdridge. However, as I have found that the appeal site is not located within these settlements, Policy MTRA3 is not determinative in this case.

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<sup>5</sup> *City and Country Bramshill Ltd v SSCLG and others* [2021] EWCA Civ 320

<sup>6</sup> *Braintree District Council v SSCLG, Greyread Ltd & Granville Development Ltd* [2018] EWCA Civ 610

## **Other Matters**

25. The development provides social and economic benefits from the provision of three additional dwellings, in line with the Framework's objective of boosting the supply of homes, and the support of local services and facilities from the occupants. However, given the scale of the appeal scheme, these benefits would be small and I attach limited weight to them as a result. Any environmental benefits derived from the development would be similarly small.

## **Planning Balance and Conclusion**

26. I have found that the appeal site is suitable for the development and would lead to some, albeit limited, public benefits. However, these must be balanced against the adverse effect on the integrity of the Solent I have identified above, and the associated development plan conflict. I give substantial weight to this conflict.
27. Therefore, I conclude that the appeal scheme conflicts with the development plan when considered as a whole. There are no material considerations, including the provisions of the Framework, either individually or in combination, that outweigh the identified harm and the associated development plan conflict. Therefore, the appeal is dismissed.

*Juliet Rogers*

INSPECTOR