



Appeal Decision

Site visit made on 5 September 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2024

Appeal Ref: APP/C1760/W/24/3336616

Fenstanton, Coley Lane, Chilbolton, Hants SO20 6AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mrs Parminder Mew (Darcy Construction Ltd) against Test Valley Borough Council.
- The application Ref is 23/02040/VARN.
- The application sought planning permission for demolition of existing dwelling, erection of one replacement four bedroom dwelling (plot 2), one additional three bedroom dwelling (plot 1), and construction of new shared vehicular access without complying with a condition attached to planning permission Ref 18/02779/FULLN, dated 24 October 2018.
- The condition in dispute is No 15 which states that: The dwelling hereby permitted on plot 1 shall have no more than three bedrooms at one time.
- The reason given for the condition is: In order to meet the local housing need and to ensure appropriate on-site parking provision is provided in accordance with policies HD1 and HD5 of the emerging Chilbolton Neighbourhood Development Plan 2019-2029.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling, erection of one replacement four bedroom dwelling (plot 2), one additional three bedroom dwelling (plot 1), and construction of new shared vehicular access at Fenstanton, Coley Lane, Chilbolton, Hants SO20 6AZ in accordance with the application Ref 23/02040/VARN, without compliance with condition numbers 1 and 15 previously imposed on planning permission Ref 18/02779/FULLN dated 24 October 2018 and subject to the conditions in the attached schedule.

Preliminary Matters

2. The Neighbourhood Development Plan for the Parish of Chilbolton (CNDP) was made on 6 May 2021. I give it full weight as part of the development plan.

3. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. The proposed revisions to the Framework are draft and therefore may be subject to change before the final Framework is published. Moreover, the draft revisions to the Framework and other proposed reforms are not directly relevant to this appeal. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on them.

Background and Main Issues

4. Planning permission Ref 18/02779/FULLN has been granted for one four-bedroom dwelling (plot 2) and one three-bedroom dwelling (plot 1). Application Ref 23/02040/VARN was subsequently made to the Council seeking permission to carry out the development without complying with condition 15. The appeal was made on the basis of the Council's failure to determine that application within the statutory timescale.
5. The Council has provided a statement explaining the reasons why it would have refused permission to carry out the development without complying with condition 15, had it been able to do so. I have had regard to this in framing the first main issue.
6. In addition, the Council has confirmed the appeal site falls within the Zone of Influence of several designated European sites.
7. Consequently, the main issues are:
 - whether the condition is necessary, enforceable and reasonable, having regard to local housing need and highway safety; and
 - the effect of the proposal on the integrity of designated European sites.

Reasons

Whether the condition is necessary, enforceable and reasonable

8. Paragraph 56 of the Framework states planning conditions should only be used where they satisfy six tests, including that they are necessary, enforceable and reasonable in all other respects. Planning Practice Guidance¹ adds that any proposed condition that fails to meet one of the six tests should not be used.
9. The disputed condition seeks to control the way in which rooms in the house on plot 1 would be used. The design of the two new houses is very similar and each includes a room in the roof served by rooflights. On the evidence before me, this room is described as a bedroom on the plans for the house on plot 2 and as an attic store on the plans for the house on plot 1. There would be little to prevent the attic store room on plot 1 being used as a bedroom, in the same way as on plot 2. There would also be little in these circumstances to alert the Council to a possible breach of the condition. Monitoring use of the room would therefore be practically impossible.

¹ Paragraph: 006 Reference ID: 21a-006-20140306

10. Moreover, under s55(2)(a) of the Town and Country Planning Act 1990, the carrying out for the maintenance, improvement or other alteration of any building or works which affect only the interior of a building shall not be taken to involve development that requires planning permission. This means that putting a bed in the attic room, or indeed putting in partition walls to subdivide any or all of the three bedrooms in the house on plot 1, would not amount to a material change of use that requires planning permission.
11. Consequently, I find the disputed condition is not enforceable and is not reasonable in all other respects.
12. CNDP Policy HD1 states the mix of any individual development should only be 1-, 2- and 3-bedroom homes. Supporting text explains this is to respond to evidence of local need for smaller houses of 1-3 bedrooms within the settlement. CNDP Policy HD5 sets a parking standard of 3 spaces per 3-bed unit and 4 spaces per 4-bed unit.
13. These Policies are relatively recently made following independent examination and a referendum and I see no reason to question their rationale. Nevertheless, the evidence before me is not sufficiently compelling to persuade me that, in this case, seven spaces for the two houses would result in an unacceptable impact on highway safety, notwithstanding the shortfall of one space against the CNDP Policy HD5 requirement. I note the Highway Authority has raised no specific concerns in this regard.
14. I therefore find the disputed condition is necessary to accord with CNDP Policy HD1 in relation to local housing need, but it does not satisfy the test of necessity in relation to highway safety.
15. For the above reasons, I conclude the condition is necessary, but it is not enforceable or reasonable. Accordingly, as the condition fails to meet two of the six tests in Framework paragraph 56, it should not be used.

Effect on the integrity of designated European sites

16. The appeal site lies within the nutrient neutrality catchment area of the Chichester and Langstone Harbours, Solent and Southampton Water, and Portsmouth Harbour Special Protection Areas/Ramsar sites (the SPAs); and the Solent Maritime Special Area of Conservation (the SAC). The SPAs and SAC are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
17. If I were to allow the appeal, I would issue a new permission for the development originally permitted under application Ref 18/02779/FULLN. Under the Habitats Regulations, an appropriate assessment is required in relation to the effect of this development on the integrity of the sites. This responsibility falls to me as competent authority in the context of this appeal.
18. The SPAs/SAC encompass a major estuarine system comprising extensive mudflats, sandflats, sand banks and salt meadows together with adjacent coastal habitats including saline lagoons, shingle beaches, reedbeds, damp woodland and grazing marsh. These habitats support a rich variety of flora and fauna that form the food resource for estuarine birds. In summer, the

sites are important for breeding seabirds, including Gulls and four species of Tern. In winter, the sites hold a large and diverse assemblage of waterbirds.

19. The conservation objectives of the SPAs/SAC are to ensure the integrity of the sites is maintained or restored by maintaining or restoring the extent, distribution, structure, function and supporting processes of the qualifying habitats and species, and the populations and distribution of each of the qualifying features within the sites.
20. Nutrient pollution is a problem for the habitats in the SPAs/SAC because excessive levels of nutrients contained in nitrogen and phosphorus can cause the rapid growth of certain plants and algae through the process of eutrophication. This can displace species that are either important in their own right or which act as sources of food and shelter for other species, thereby adversely affecting the qualifying features of the European sites.
21. It is likely that two dwellings would generate more wastewater than the one original dwelling, which would increase levels of nitrogen and phosphorus entering the protected sites. Therefore, the development, alone and in combination with other development, would be likely to have a significant adverse effect on the integrity and conservation objectives of the SPAs/SAC.
22. The appellant has proposed a package treatment plant with associated monitoring and maintenance strategy for the dwellings. This could be secured via condition were the appeal to be allowed. Natural England has been consulted as part of this appropriate assessment. On the evidence before me, I am satisfied such a measure, secured by condition, would be sufficient to avoid an adverse impact on the integrity of the SPAs/SAC.
23. For the above reasons, I conclude the proposal would not have an adverse effect on the integrity of protected European sites. Accordingly, I find no conflict with Policies E5 and E8 of the Test Valley Borough Revised Local Plan 2016 (TVLP), which require proposals to satisfy the requirements of the Habitats Regulations and demonstrate no adverse impact on the natural environment from pollution. I also find no conflict with the Framework, which requires adequate mitigation if significant harm to sites protected under the Habitats Regulations cannot be avoided.

Other Matters

24. I have considered the suggestion that, if the appeal were to be allowed, it would set a precedent for other similar applications. However, no directly similar or comparable sites to which this might apply have been put forward. Each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case.

Conditions

25. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. The development has commenced, so a time limit condition is not necessary. I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.

26. The condition requiring package treatment plant(s) is necessary for the reason given above.
27. The conditions relating to tree protection, construction management, profiling of the site frontage, external materials, landscaping and biodiversity enhancement measures are necessary to ensure the development is carried out in accordance with the details that have been approved through discharge of conditions attached to permission ref 18/02779/FULLN.
28. Ecological avoidance and mitigation measures are necessary to protect biodiversity. The conditions relating to vehicle parking, including drainage, and access/visibility splays are necessary in the interest of highway safety. The condition securing cycle parking is necessary to promote cycling.
29. Obscured glazing and restricted window opening are necessary to protect the living conditions of neighbouring occupiers. The condition restricting water usage in the new dwellings is necessary to promote water efficiency in accordance with TVLP Policy E7.

Conclusion

30. For the reasons given above I conclude the appeal should succeed. I will grant a new planning permission without the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

C Carpenter

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos: L01A Location Plan; 01N Site Layout; 14B Proposed Elevations; 15B Proposed Floor Plans Plot 2; 15C Proposed Floor Plans Plot 1; 16B Proposed Elevations; 17B Proposed Roof Plan; 18B Proposed Sections; 19B Proposed Sections; 20A Proposed Sections; 21B Site Layout; Street Scene.
- 2) The trees and hedgerows shown on the approved plans to be retained shall be protected in accordance with the details approved under application reference 18/02779/COND3. The tree protection measures shall be retained and maintained for the full duration of construction works or until such time as agreed in writing by the local planning authority. No activity shall take place within the protected area without prior written agreement of the local planning authority.
- 3) The development shall be carried out in accordance with the Demolition and Construction Management Plan approved under application reference 18/02779/COND4.
- 4) Profiling of the site frontage shall be carried out in accordance with the details approved under application reference 18/02779/COND5A.

- 5) The materials to be used in the construction of all external surfaces hereby permitted shall be in accordance with the samples and details approved under applications reference 18/02779/COND6 and 18/02779/COND6A.
- 6) Hard and soft landscaping works shall be implemented, managed and maintained in accordance with the details approved under application reference 18/02779/COND7A.
- 7) The biodiversity enhancement measures to be incorporated into the development shall be installed in accordance with the details approved under application reference 18/02779/COND8.
- 8) The development hereby permitted shall be carried out in accordance with the measures set out in Section 5.3 'Ecological Implication Avoidance and Mitigation' of the submitted Preliminary Ecological Appraisal by Enims, dated October 2017.
- 9) The dwellings hereby permitted shall not be occupied until the vehicle parking and manoeuvring areas and pedestrian routes as shown on the approved plans have been laid out and provided with a hardened, sealed and drained surface. Provision shall be made to direct run-off water from hard surfaces to permeable and porous areas or surfaces within the curtilage of the development. The permeable and porous areas and surfaces shall thereafter be retained as such. The vehicle parking and manoeuvring areas shall thereafter be kept available at all times for the parking and manoeuvring of vehicles.
- 10) The dwellings hereby permitted shall not be occupied until provision for cycle parking/storage has been made in accordance with the details shown in the submitted Planning Design and Access Statement Revision A, dated 9 March 2021. The cycle parking/storage provision shall thereafter be kept available at all times for the parking/storage of cycles.
- 11) The dwellings hereby permitted shall not be occupied until the new access has been constructed and visibility splays have been provided in accordance with the details shown on drawing no. 020.0364.001 Revision B in Technical Note Ref 020.0364/TN/3, by Paul Basham Associates, dated December 2020. The visibility splays shall thereafter be retained. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order), the visibility splays shall be kept free at all times of any obstruction exceeding 1 metre in height above the adjacent carriageway channel.
- 12) The dwellings hereby permitted shall not be occupied until the first-floor windows and roof light windows within the side elevations and side-facing roof slopes (south west and north east) of the dwellings have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which they are installed shall be capable of being opened. The obscured glazing and restricted opening shall be retained thereafter.

- 13) The dwellings hereby permitted shall not be occupied until a package treatment plant(s) has been installed and brought into use to service both dwellings. The package treatment plant(s) shall be installed in accordance with the submitted details, consisting of a 'Solido Smart SBR' system, and shall be retained and maintained thereafter in accordance with the submitted 'Package Treatment Plant Monitoring and Maintenance Programme by Earthcare Technical Ltd, dated 20 May 2021.
- 14) Water use in each of the dwellings hereby permitted shall not exceed 110 litres/person/day in accordance with the optional requirement in Part G2 of Building Regulations 2015 as amended.

End of schedule