



Appeal Decision

Site visit made on 27 August 2025

by **E Worley BA (Hons) Dip EP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 September 2025

Appeal Ref: APP/Y3940/W/25/3361131

Land Adjacent to Kiln Close, Whaddon, Wiltshire SP5 3HE

- 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 G Mundy on behalf of Manor House Developments Ltd against the decision of Wiltshire Council.
 - The application Ref is PL/2024/05291.
 - The development proposed is the excavation of former railway embankment, erection of 3 x new self build dwellings, hard and soft landscaping and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development above is taken from the Decision Notice, it reflects the change to the proposal during the application process, from open market dwellings to self build dwellings, as confirmed in the appellant's updated Planning Statement. However, in the absence of an agreement pursuant to Section 106 of the Town and Country Planning Act 1990, there is no mechanism before me to secure the dwellings for this purpose. The proposal therefore falls to be considered as open market dwellings. For the avoidance of doubt, I have determined the appeal on this basis.

Main Issues

3. The main issues are the effect of the proposed development on the character and appearance of the area and biodiversity.

Reasons

Character and appearance

4. As set out by a previous Inspector, the appeal site comprises a formerly vegetated railway embankment. The parcel of land is rectangular in shape and sits between the rear boundaries of the residential properties fronting Southampton Road and those within the cul-de-sac at Kiln Close. The immediate area is therefore residential in character, including dwellings which vary in scale, appearance and layout, on plots of a range of shapes and sizes. The appeal proposal would see the excavation and removal of the embankment and the construction of 3 detached self-build dwellings.

5. The Council's main concern is the loss of the existing railway embankment, which the appeal submissions indicate previously consisted of an area of mature woodland, which provided a substantial green corridor and a buffer zone between the existing properties on either side of the site. Prior to the removal of the vegetation, the verdant qualities of the site, which arose from the cessation of its use as part of the wider railway network, were clearly enjoyed by the occupiers of neighbouring properties. However, the land, which is now largely devoid of landscaping, was cleared in accordance with a felling licence by a previous owner, prior to the submission of the planning application. Thus, the effect of the removal of trees and shrubbery is not part of the appeal proposal.
6. While the previous appearance of the site may have made a positive contribution to the character and appearance of the area, including the qualities of the Special Landscape Area (SLA), the land in its current form, appears as a substantial bare earth bund. As such, while it is an undeveloped space within the surrounding built form, it is not a meaningful component of the verdant character of the area worthy of being preserved.
7. The Council contend that the embankment is a valued landscape and, in accordance with policies in the National Planning Policy Framework (the Framework), should be protected and enhanced (in a manner commensurate with their statutory status or identified quality in the development plan) so as to conserve and enhance the natural environment. A valued landscape does not have to be designated to be afforded protection from inappropriate development, and a wide range of factors may contribute to a valued landscape. Nonetheless, while I am mindful that, before the clearance of the site, it may have had some landscape value, there is no compelling evidence, particularly given its current form and condition, to suggest it would constitute a valued landscape.
8. Consequently, the loss of the embankment, while it would change the appearance of the site, would not give rise to harm to the character and appearance of the area. Moreover, the Council's submissions do not indicate any specific harm that would arise through the construction of 3 detached dwellings as proposed.
9. My attention is drawn by the Council to a recent appeal decision at the site¹ for the erection of 4 dwellings. However, the scheme differs from the appeal proposal in terms of the number of units proposed. Moreover, while the Inspector found that the proposal would urbanise and undermine the verdant and spacious character of this part of the SLA, this was primarily due to the extent of the built form in the spaces between the proposed dwellings, which would be visible from Kiln Close. Therefore, from the evidence before me, it does not appear to be directly comparable, as such the weight to be attached to this is limited.
10. For the foregoing reasons, I conclude that the proposed development, including the removal of the embankment, would not be harmful to the character and appearance of the area. It would therefore not conflict with the aims of Core Policies 52 and 57 of the Wiltshire Core Strategy, adopted January 2015 (WCS) which require development to make provision for the retention and enhancement of Wiltshire's green infrastructure network and seek development of a high standard of design, which is expected to create a strong sense of place through drawing on the local

¹ APP/Y/3940/W/24/3347288

context and being complementary to the locality through, among other things, relating positively to its landscape setting and the existing pattern of development.

Biodiversity

11. Core Policy 50 of the WCS requires all development to demonstrate that there is no net loss of local biodiversity resource and seek opportunities to enhance biodiversity. Despite the clearance works, the Preliminary Ecological Appraisal² (PEA) recorded the presence of several habitats on site including scattered scrub, broad-leaved scattered trees and recently felled broad-leaved woodland. The PEA also identified the potential for the site to support some protected species; however, any impacts could be mitigated through the imposition of appropriate planning conditions.
12. While I note the Council's concern that the clearance of the site is likely to have reduced its ecological value, there is no assessment before me that describes the biodiversity value of the land before it was substantially cleared.
13. Under the statutory framework for biodiversity gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met. The appellant's Planning Statement sets out that, as the proposal seeks to erect 3 self-build dwellings on a site less than 0.5 hectares, the development would be exempt from providing the statutory 10% biodiversity gain under the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and the biodiversity gain condition would not apply.
14. In order to qualify for this exemption, there must be an effective mechanism through which the properties could be secured as self-build units. A planning condition would fail to satisfy the tests in the National Planning Policy Framework (the Framework) with regards to enforceability, and while the officer's report sets out the appellant's willingness to enter into a legal agreement to secure the units as self build, there is no obligation before me. Consequently, in the absence of a mechanism to ensure the units would be self build dwellings, the exemption is not secured with any degree of certainty. In light of the above considerations, it has not been demonstrated that the proposal would be exempt from the provision of biodiversity gain or that the biodiversity gain objective would be met by other means.
15. Thus, while the proposal would not have a harmful effect on protected species, it fails to make appropriate provision for biodiversity gain and would therefore have an adverse effect on biodiversity. Accordingly, it would conflict with the aims of Core Policy 50 of the WCS and would fail to comply with Schedule 7A of the Town and Country Planning Act 1990, which mandates a minimum 10% biodiversity gain for new developments.

Other Matters

16. The proposal would offer benefits in terms of the supply of housing, together with social and economic benefits, including support for local services, associated with the construction and occupation of the dwellings. It would also accord with policies within the Framework which encourage the efficient use of land, including underutilised land, and give great weight to the benefits of using suitable sites

² Preliminary Ecological Appraisal by Elite Ecology dated May 2024

within existing settlements for homes. The scale of the proposal, for 3 dwellings, would not greatly improve total supply, nonetheless, given the current circumstances in the district any additional provision would be valuable.

17. While it is asserted that the proposal would provide self build units, which could meet the needs of specific groups, for which the Council indicate there is currently an unmet need, in the absence of a mechanism to secure the dwellings for such purposes, I attribute this limited weight.
18. The appellant suggests that the proposal would enhance the appearance of the site through additional landscaping and development of a good design. However, these are normal expectations of well designed development. Furthermore, despite its current appearance, the presence of the embankment does not have an injurious effect or detract from the character and appearance of the area. Thus, the effect of the development in these regards is of neutral weight.
19. The proposal may be compliant with various other provisions of the development plan and the aims of the Wiltshire Design Guide. Nonetheless, the absence of harm, objection from statutory consultees, or conflict with other relevant development plan policies and guidance is of neutral weight and does not weigh in favour of the proposal.
20. I note that the appellant has sought to address the Council's concerns through the submission of the revised proposal which is the subject of the appeal. However, I must assess the proposal based on the planning merits of the scheme and the evidence before me.
21. The appeal submissions indicate that the site is located within the catchment of the River Avon Special Area of Conservation (SAC), the zone of influence of the New Forest protected sites (New Forest Special Protection Area (SPA), New Forest SAC and New Forest Ramsar site) and the Solent protected sites (Solent Maritime SAC, Chichester and Langstone Harbours SPA and Ramsar site, Portsmouth Harbour SPA and Ramsar site, and the Solent and Southampton Water SPA and Ramsar site). The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates this is only necessary where the competent authority is minded to grant consent for the proposal. As such, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Planning Balance and Conclusion

22. The Council is not able to demonstrate a 5 year supply of deliverable housing sites. In such circumstances paragraph 11 d) of the Framework falls to be considered. In so far as this appeal is concerned, this indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
23. I have found that the proposal would not give rise to harm to the character and appearance of the area, or harm protected species. Set against this, given the lack

of certainty that the proposal would be delivered as self-build units, it has not been demonstrated that the scheme would meet the biodiversity gain exceptions. As such, the support for the proposal in the Framework is countered by the resultant conflict with those parts of paragraph 187 of the Framework which require net gains for biodiversity. This conflict, when considered in combination with the failure to comply with Schedule 7A of the Town and Country Planning Act 1990, carries substantial weight. Thus, in this case, the adverse impacts would therefore significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the proposal would not benefit from the presumption in favour of sustainable development.

24. The harm identified in respect of the second main issue means that the proposal would conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework, which outweigh this finding to justify granting planning permission contrary to the development plan.

25. For the foregoing reasons the appeal is dismissed.

E Worley

INSPECTOR