



Appeal Decision

Site visit made on 26 November 2025

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 January 2026

Appeal Ref: APP/W1715/W/25/3363580

Land adjacent to Pear Tree PH, Winchester Road, Borley Green, Botley, Southampton SO32 2DH

- 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 Ben Olds of Dorrington Homes (UK) Limited against the decision of Eastleigh Borough Council.
 - The application Ref is F/24/97934.
 - The development proposed is erection of 6 dwellings, associated parking and creation of new access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the proposal from the application form as it adequately describes the proposal, and there is no evidence to confirm that the appellant agreed to the Council's amended description.
3. The draft Botley Parish Neighbourhood Plan 2016-2036 has not been examined or subject to a referendum. It therefore attracts limited weight in my determination of the appeal.

Main Issues

4. The main issues are:
 - whether there would be a significant effect on the internationally important features of the Solent Complex of European protected sites, or the New Forest Special Protection Area, Special Area of Conservation and Ramsar sites,
 - whether the site is suitably located for the development proposed with regard to the development plan,
 - the effect of the proposal upon the character and appearance of the area,
 - the effect of the proposal upon the operation or viability of the Pear Tree Inn Public House (PH),
 - whether the proposal would secure acceptable living conditions for its future occupants in respect of noise, and
 - whether the proposal makes provision for securing biodiversity net gain.

Reasons

European sites

5. The appeal site is within the zone of impact for the New Forest Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar sites. The New Forest designations exist due to the international importance of the area for rare and vulnerable birds that are supported by its habitats. These include honey buzzard, nightjar, woodlark and Dartford warbler.
6. Research shows that residents in the area of the appeal site visit the New Forest, and such visits contribute towards the erosion of the New Forest protected habitats and the subsequent disturbance of the species that they support. The proposal would result in the permanent increase of persons residing at the site. This increase could have a significant effect on the protected habitats and interests of the New Forest sites because persons residing at the appeal site could access the protected areas for leisure purposes.
7. The Council has approved an Interim Strategy¹ for the creation of Suitable Alternative Natural Green Space (SANG) and financial contributions towards the management of visitor pressures to mitigate the impacts of additional residential development in the area. Natural England (NE) as the Statutory Nature Conservation Body was consulted during the appeal. NE is not in agreement with the Interim Strategy as it relies on a SANG provision of 2 hectares per 1000 residents, rather than 8 hectares per 1000 residents which NE advises is evidenced and accepted. NE advises that an appropriate assessment that relies on mitigation that accords with the Interim Strategy is unable to pass the tests of the Habitats Regulations.
8. In terms of the evidence provided with the appeal to support the lower rate, I cannot see details of sample sizes, confidence intervals or survey dates, and cannot be sure that the results were representative of the total population of the plan area. Furthermore, I note that the SANGs planned to the east of Southampton would be close to the appeal site. They would be likely to attract future residents of the appeal site due to their ease of accessibility and proximity, and it is reasonable to assume that they would be preferable to travelling further around Southampton to access the New Forest for recreational purposes. This gives further weight to the higher provision of 8 hectares per 1000 dwellings. As such, and on the basis that the courts have established that NE advice should carry great weight, I am not satisfied that I should deviate from the NE position.
9. The submitted Unilateral Undertaking (UU) secures a contribution to accord with the Interim Strategy, which I have found would not pass the tests of the Habitats Regulations, or a bespoke mitigation strategy that is submitted to and approved in writing by the Council and NE at a later date.
10. With regard to the second option, the appellant refers to an appeal decision at Satchell Lane². In the decision the Inspector was satisfied that a Section 106 Agreement that provided for the New Forest Mitigation Strategy to be submitted to the Council for approval, to be approved before development commences, would

¹ Eastleigh Borough Council Strategy for Suitable Alternative Natural Green Space 2022

² Planning Inspectorate Ref: APP/W1715/W/22/3292580

provide the Council with the means to ensure that adequate mitigation would be provided.

11. It is however not clear from the decision how the Inspector as the competent authority could have been satisfied that the mitigation would be appropriate to address any adverse impacts, as at the point that the decision was made the mitigation had not been agreed or secured. This does not accord with the Planning Practice Guidance, which states that an appropriate assessment must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project³. Furthermore, as the appeal was dismissed for other reasons this approach was essentially agreed only in principle, and does not therefore represent a fully outworked alternative to the Council's Interim Strategy.
12. In terms of the appeal before me, as the competent authority I need to be satisfied that the mitigation is appropriate to address any adverse impact. For the reasons given I am unable to reach this conclusion, and I cannot therefore fulfil the duty placed on me as the competent authority under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). The appeal must therefore fail.
13. The appeal site is also within the zone of impact of the Solent and Southampton SPA and Ramsar site and the Solent Maritime SAC. These are collectively known as the Solent Complex. The Solent Complex provides a haven for thousands of protected birds every winter. This includes waders and wildfowl that travel thousands of miles from the summer breeding grounds to the Solent, including 10% of the global population of dark-bellied brent geese. Over winter these birds need to be able to feed and rest undisturbed if they are to survive and fly back to their summer breeding grounds. In the summer, some species need to be left undisturbed so they can successfully breed and raise their young. This makes the area of worldwide importance to wildlife.
14. NE advises that there are high levels of nitrogen inputs to this water environment, and there is evidence that these nutrients are causing eutrophication within the Solent Complex. As well as from agricultural sources, these nutrients also come from wastewater from housing development. NE has advised that new housing development in the area has the potential to exacerbate these impacts and create a risk to the future conservation status of the sites that make up the Solent Complex.
15. Achieving nitrate neutrality is a means of ensuring that new development does not add to the existing nutrient burden and provides certainty that the development is deliverable in accordance with the Habitats Regulations. A nutrient budget for the proposal has been submitted, with the intention that nitrate credits would be purchased from the Council utilising its mitigation scheme to achieve nutrient neutrality for the proposal. This is appropriately secured through the submitted UU.
16. As the proposal would result in the permanent increase of people residing at the site it would also have an impact on the Solent Complex arising from additional recreational pressure. Birds that use the site can be disturbed by visitors, including dog walkers. Disturbance can impact bird's behaviour through disruption to breeding, rest, foraging and feeding as well as increasing stress. This can increase

³ Paragraph: 003 Reference ID: 65-003-20190722

mortality and could therefore have a significant effect on the protected habitats and interests of the Solent Complex.

17. The Council's Solent Recreation Mitigation Strategy 2017 provides a strategic solution to ensure that the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational disturbance on the Solent Complex. This requires a financial contribution for each dwelling towards the better management of visitors to the area to ensure that recreational activity and nature conservation interests are not in conflict. The submitted UU secures the required contribution and accords with the Strategy. NE was consulted during the appeal and endorses this approach.
18. In summary, whilst the proposal would satisfy the Habitats Regulations with regard to the Solent Complex, it would not for the New Forest designations for the reasons given. It would not therefore accord with Policy DM11 of the Eastleigh Borough Local Plan 2016-2036 (LP), which states that development which is likely to adversely affect the integrity of an international or European nature conservation site will not be permitted subject only to imperative reasons of overriding public interest and securing any necessary compensatory measures in the absence of alternative solutions.

Location

19. With reference to the LP the appeal site is in an area of designated countryside. Policy S5 of the LP seeks to maintain the rural character of the countryside and to limit urbanisation. It allows for limited types of development to take place within the countryside. The proposal is not for any of the development types listed and would therefore not accord with Policy S5.
20. However, although designated as countryside by the LP, in reality the character of the land surrounding the appeal site is more appropriately understood as developed. This includes the recent development of the land at the rear of the site, for a development known as Boorley Park. This is a substantial residential development that was partly completed and partly under construction at the time of my visit. It extends from the rear of the plots fronting Winchester Road up to the railway line. Details before me show that the permission includes all the land near to the site that is between Winchester Road and the railway line. This is already significantly changing the context of the site, and when complete will give the appeal site a wholly urban context with a considerable depth of development to all sides.
21. This has resulted in a significant change to the site's context, to the extent that it is no longer reasonable to call it a countryside location or to seek the retention of rural character where it would be desirable to limit urbanisation. These recently approved schemes for extensive residential development immediately adjoining the site, which mean that the site would be surrounded by residential development to a considerable depth, warrants a conclusion in relation to this main issue that is not in accordance with Policy S5 of the LP; I therefore find that the site is suitably located for the development proposed.

Character and appearance

22. The appeal site fronts Winchester Road with existing development on three sides. Winchester Road is the main route through the settlement and is busy. Existing

nearby development is mixed in character. Some dwellings are set in large plots such as those to the north of the site that front the road. Others are more regular such as the pair of dwellings opposite the PH, which provide a wide built frontage that is in close proximity to the road.

23. To the rear of the site the lane was undeveloped until recently, which has given the settlement a rural context. However, as I have already referred to, this has been significantly altered by recent development occurring on a considerable scale to the west and northwest of the site.
24. I cannot therefore agree that the site is semi-rural. Views across the open site to the undeveloped land beyond are already largely lost. Therefore, the undeveloped site no longer provides the connection to its rural context that it once did where views across to the open land beyond would have once been enjoyed.
25. Its landscape value is otherwise limited. Gaps between the proposed dwellings, and the space between the appeal site and the PH would be sufficient to ensure that the streetscene retains a sense of spaciousness, to accord with the lower density of development to the north and northeast of the site. Similarly, the front face of the proposed dwellings would be set back to enable them to sit comfortably alongside the PH and Mimosa Lodge, thereby respecting the existing building line.
26. In summary, the proposal would be a logical infilling in the context of the development that is taking place behind the site. It would not harm the character or appearance of the area, and would accord with Policy DM1 of the LP and Paragraph 135 of the National Planning Policy Framework (Framework) which among other things seek to ensure that new development is well designed and takes full and proper account of the context of the site including character, and is well integrated in terms of scale, layout, density, design and siting.

Operation or viability of the PH

27. The appeal site is used as a garden for the PH. At the time of my visit, it contained children's play equipment and benches, which covered part of the site close to the car park. The remainder of the area was mainly laid to grass. It has the appearance of an adjunct to the PH's curtilage rather than a core external area; the smaller area of garden to the rear of the car park and directly accessed from the PH appears to be better utilised and is likely to be more useful on a day to day basis as it connects directly to the building.
28. The proposal would mean that this land could no longer support the functioning of the PH. The existing parking area would however be unaffected, as would the smaller area of garden referred to above.
29. There is nothing before me to suggest that the viability or operation of the PH is dependent on the continued use of the appeal site. Indeed, the evidence suggests that there is limited competition in the local area. The area of retained land to the north of the PH is large and would continue to provide useful outdoor space and parking. Furthermore, the context of the PH has significantly changed as a result of recent development; a significant number of new dwellings are within easy walking distance of the PH, which could mean that the parking area becomes less important, with the potential for additional space to be given over to garden.

30. The proposal would result in the construction of dwellings close to the PH. Plot 1 would share a boundary with its car park and garden. The Council's third refusal reason referred to the potential for complaints from future occupiers of the proposed dwellings that would inhibit or create risks to the operation of the PH. I will consider this in the context of the next main issue.
31. In summary, the proposal would not harm the operation or viability of the PH. It would accord with Policy DM36 of the LP and Paragraphs 88 and 98 of the Framework, which together seek to avoid the loss of community, leisure or cultural facilities.

Living conditions

32. The proposed dwellings would front a busy road and would sit between a small sewage pumping station and the PH. To the rear of the site, although some distance away, is a railway line. This is a fairly typical urban context.
33. Guidance from Southern Water⁴ suggests that development should not be carried out within 15 metres of a pumping station for reasons of noise, odour and vibration. However, beyond this there is nothing in the guidance to justify this distance, or to explain the severity of the issue for development that would be carried out in this area.
34. The small pumping station is typical of those found in urban areas. The appellant suggests that the noise it emits is like that of a household fridge, which would be a similar level of noise that could be emitted from the air source heat pump that would be fitted to the side of each dwelling. The northernmost dwelling would be approximately 7 metres from the pumping station and would be separated from it by a landscaped strip and two fences. This arrangement would be similar to the existing relationship between the pumping station and the residential building to the north, where there are no reported issues. I accept that an absence of past complaints should not be determinative; however, this does at least accord with my own observations regarding the small size of the pumping station and the appellant's suggestion that the sound it emits is very low.
35. The submitted noise report⁵ recommends acoustic glazing and mechanical ventilation to deal with traffic noise. It would be reasonable to assume that this would also adequately address noise from the pumping station. Given the modest size of the structure it is unlikely that odour would be an issue, and again there are no reports that this has caused problems for the users of the building to the north. Similarly, disturbance from vibrations is also likely to be modest for such a small facility and no issues of this nature are reported to date.
36. The Council is of the view that the noise report is insufficient, primarily because it suggests that the monitoring that was carried out was not adequate. The monitoring point chosen was significantly closer to the road than the front of the dwellings would be, thereby painting a worst-case scenario in respect of road noise. In other respects the noise report appears to show that these matters were carefully and thoroughly considered. Taking into account the characteristics of the site and the proximity of a large number of other dwellings to the same noise sources, I am satisfied that the report is sufficient.

⁴ Developer Services Guidance to development in proximity to Southern Water assets V1.2 15 September 2017

⁵ Hawkins Environmental Noise Assessment 9 July 2024 H3755 – NV – v1

37. In terms of the potential impact from the PH, the side of the southernmost dwelling would be adjacent to the car park and garden for the PH. There is some potential for activities in this area, particularly where they extend into the evening, to impact the living conditions of the future occupants of this dwelling. Mitigation recommended in the noise report would also help to address this issue, as would the visual barrier between the areas that would be provided by the proposed native hedge, which has a positive effect on the way noise is perceived. Beyond this, some disturbance would be a reasonable expectation in a developed area such as this where different uses exist side by side and should not be so significant that the operation of the PH would be unreasonably restricted. Furthermore, the noise report suggests that activity in the car park and garden was significantly masked by traffic noise at the time that the survey was undertaken.
38. The railway line is a considerable distance from the appeal site. The large residential development that is underway behind the site would occupy the space between the appeal site and the railway line, and the level of impact would be very similar to other existing development along Winchester Road. Accordingly, I am not convinced that the impact of the railway line would be so significant that it should impact the proposal; and any impacts should be satisfactorily addressed by the measures recommended in the noise report.
39. In summary, the proposal would secure acceptable living conditions for its future occupants in respect of noise. It would accord with Policies DM1 and DM8 of the LP and Paragraph 200 of the Framework, which together seek to ensure that new development secures good living conditions and amenity for future occupants and can be effectively integrated with existing businesses.

Biodiversity net gain

40. It is common ground between the parties that the required 10% biodiversity net gain (BNG) cannot be provided on site. The submitted UU secures off-site BNG of a value that exceeds the pre-development biodiversity value of the on-site habitat by at least 10%. It covenants the owner not to commence the development until the off-site BNG scheme has been submitted to and approved in writing by the Council and implemented in accordance with the approved scheme.
41. In summary therefore, there is an appropriate mechanism before me for securing the necessary BNG, in accordance with Policy DM11 of the LP, which seeks to ensure that development achieves biodiversity targets.

Other Matters

42. The Council is unable to demonstrate a five year supply of deliverable housing sites (5YHLS). As such, Paragraph 11 d) of the Framework should be engaged. However, an exception is provided where the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. Footnote 7 establishes that this includes habitats sites. I have found that the proposal would not satisfy the Habitats Regulations. It would not therefore accord with the Framework and Paragraph 11 d) would not be engaged.

Conclusion

43. The proposal would be contrary to the development plan and Habitats Regulations for the reasons given. Although I have found in favour of the other main issues, and the proposal would deliver 6 dwellings which is a benefit that weighs in favour of the proposal, this, along with the various economic benefits, cannot outweigh my findings regarding the Habitats Regulations. Therefore, the appeal should be dismissed.

A Tucker

INSPECTOR