



Appeal Decisions

Site visit made on 11 December 2025

by **C Butcher BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 January 2026

Appeal Ref: APP/P2114/W/25/3367146

Land to the east of Birch Close and north of Solent Gardens, Freshwater, Isle of Wight

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Journey Estates Ltd against the decision of Isle of Wight Council.
 - The application Ref 24/01230/RVC was refused by notice dated 19 December 2024.
 - The application sought planning permission for a residential development comprising 44 dwellings with access from Birch Close; access roads, parking and landscaping, without complying with a condition attached to planning permission Ref 21/00357/FUL, dated 21 February 2022.
 - The condition in dispute is No. 11 which states that: No development shall take place until a Traffic Regulation Order has been secured from the Local Highway Authority for the implementation of double yellow lines on the southern side of Birch Close about its junction with the site access and its junction with Colwell Road and on Colwell Road about its junction with Birch Close; and the development hereby approved shall not be occupied until the resultant on-street parking restrictions have been implemented.
 - The reason given for the condition is: In the interests of highway safety and to comply with Policy DM2 (Design Quality for New Development) of the Island Plan Core Strategy.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development comprising 44 dwellings with access from Birch Close; access roads, parking and landscaping, at Land to the east of Birch Close and north of Solent Gardens, Freshwater, Isle of Wight in accordance with the application Ref 24/01230/RVC, without compliance with condition number 11 previously imposed on planning permission Ref 21/00357/FUL, dated 21 February 2022, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the effect of the proposed amendment on highway safety.

Reasons

3. Condition 11 currently requires a Traffic Regulation Order (TRO) to be agreed prior to the commencement of development. The TRO would ensure that double yellow lines are provided at particular parts of the highway in the interests of safety. Crucially, the condition also requires that such measures be in place prior to the occupation of the proposed dwellings.

4. The proposed amendment to the condition would require the TRO to be agreed prior to occupation. Given that the yellow lines would still be in place prior to the occupation of the dwellings, the outcome would essentially be the same as originally envisaged. I note that the Council's decision notice sets out that, in their view, there have been no change in circumstances that would justify the proposed amendment. However, it is clear that the change in wording would make no difference to what is being delivered, and therefore there would be no harm arising in relation to highway safety. It is notable that Island Roads, in their capacity of Highway Authority, have not objected to the proposed amendment. As part of their appeal statement, the Council has suggested that the change in wording could mean that construction would proceed to an advanced stage without any TRO in place. However, this risk clearly falls to the developer, and this is not a reason for dismissing this appeal.
5. I therefore conclude that the amendment would be acceptable in highway safety terms and would therefore not conflict with the requirements of Policy DM2 of the Island Plan Core Strategy (March 2012), the relevant aspects of which seek to ensure that new development is well designed, accessible and safe.

Other Matters

6. The original application was subject to a signed Section 106 agreement which secured various matters, including affordable housing, financial contributions towards habitat mitigation and public rights of way, the trans-location of slow worms and a Biodiversity Net Gain Plan. In allowing this appeal, a new planning permission is created. However, paragraph 1.2 of the Section 106 document, and in particular the definition of 'permission', makes it clear that the legal agreement also applies to any subsequent planning permission granted under Section 73 or 73A of the relevant Act. On this basis, there is no requirement for a new Section 106 agreement to be created, or for me to re-visit the matters addressed within it.
7. Several third parties have objected to the proposal. I have had very careful regard to all of the comments made. However, the remit of this appeal is very narrow in that it is purely related to the proposed amendment to condition 11. Therefore other matters, such as those that were considered as part of the original planning application, fall outside the scope of the appeal.
8. A number of comments do raise concerns that the TRO is required during the construction phase. However, it is clear from the wording of condition 11 that it was only ever intended to be put in place prior to occupation of the dwellings. Moreover, condition 14 of the original planning permission required the provision of a Construction Management Plan. While I note that this condition has been discharged, the CMP process can still be used to implement a temporary TRO during the construction period. I note that both of the main parties appear supportive of such a measure.
9. The Council has stated that the original permission should be considered to be invalid due to the fact that development has been commenced on site prior to certain pre-commencement conditions being discharged, and that the three-year period for implementing the permission has now passed. This issue is clearly beyond the scope of this appeal, although it is the case that a permission should not automatically be considered to be invalid in such circumstances. In any event,

as set out within Planning Practice Guidance¹, the statutory three-year timescale which was applied to the original permission also applies to the new planning permission created as part of this appeal. As a result, in either case, the respective planning permissions would have to have been lawfully implemented within three years of the date of the original permission. Therefore, if through the appropriate means, it was concluded that the development has not been lawfully commenced within that period, then neither permission would remain extant.

Conditions

10. Where relevant, I have re-imposed the original conditions for the reasons previously provided at the time. Condition 11 has been varied in accordance with this application. Condition 18 has now been discharged as part of a separate appeal², and so the wording has been updated to reflect that. Condition 25, which has been the subject of a third appeal³, has not been discharged. As I am unable to re-impose pre-commencement conditions for this permission, I have updated the wording to prevent any further development prior to the discharge of condition 25. Three of the conditions previously imposed, numbered 22 to 24, have been discharged. I have therefore not re-imposed those conditions, however I have maintained the same numbering to avoid confusion.

Conclusion

11. For the reasons given, the appeal is allowed.

C Butcher

INSPECTOR

¹ Planning Practice Guidance ID 17a-015-20140306

² Appeal ref: 6000681

³ Appeal ref: APP/P2114/W/25/3372201

List of Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of the original planning permission, ref: Ref 21/00357/FUL
2. Except for the requirements of the conditions on this decision notice, the development hereby permitted shall only be carried out in complete accordance with the details shown on the submitted plans, numbered below:
 - o Units 1 & 2 Drawing No. 020 01. Sept23
 - o Units 3 & 4 Drawing No. 020 01. Sept005
 - o Units 5 & 6 Drawing No. 020 01. Sept004
 - o Units 7 & 8 Drawing No. 020 01. 007
 - o Unit 9 & 10 Drawing No. 020 01. Sept15
 - o Units 11, 12 & 13 Drawing No. 020 01. Sept12
 - o Units 14, 15 & 16 Drawing No. 020 01. Sept13
 - o Units 17 & 18 Drawing No. 020 01. Sept16
 - o Units 19 & 20 Drawing No. 020 01. Sept17
 - o Units 21 & 22 Drawing No. 020 01. Sept006
 - o Units 23 & 33 Drawing No. 020 01. Sept18
 - o Unit 25, Drawing No. 020 01. Sept22
 - o Units 26 & 27 Drawing No. 020 01. Sept01
 - o Units 28 & 29 Drawing No. 020 01. Sept02
 - o Units 30 & 31 Drawing No. 020 01. Sept003
 - o Revised Unit 32 Drawing No. 020 01. Sept009
 - o Revised Unit 33, Drawing No. 020 01. Sept11
 - o Revised Units 34 & 35 Drawing No. 020 01. Sept10
 - o Units 36 & 37 Drawing No. 020 01. Sept07
 - o Revised Unit 38 Drawing No. 020 01. Sept008
 - o Apartments 39-44 Drawing No. 020 01. Sept19
 - o Proposed Site- Drawing No. Plan-Levels SEPT20G
 - o Block Plans 20.01. BL1SEPT21B
 - o Tree Survey Plan DRAWING NO: AS/RB/0920 TSP
 - o Tree Constraints Plan DRAWING NO: AS/RB/0920 TSP Rev A
 - o Arboricultural Report DRAWING NO: AS/RB/0920 TSP Rev
 - o Ecological Appraisal and Phase 2 Surveys Updated June 2021
 - o Archaeological Desk-Based Assessment June 2021
3. The materials and finishes to be used in the construction of the external surfaces of the development hereby permitted shall be in accordance with the details approved through application 22/01065/DIS.
4. No boundary treatments or bin stores shall be installed until details have been submitted to and approved in writing by the Local Planning Authority of the positions, design, materials and type of boundary treatment and bin stores to be erected. The boundary treatments and bin stores shall be completed before the development hereby permitted is first brought into use.

Development shall be carried out and maintained in accordance with the approved details and retained thereafter.

5. No external lighting shall be installed until details of means of external lighting for the development have been submitted to and agreed in writing by the Local Planning Authority. Details shall include measures to minimise light pollution and to prevent glare and to protect wildlife within and adjacent to the site. Development shall be carried and maintained out in accordance with the agreed details and be retained thereafter.
6. The external hard surfaces for the development hereby approved shall be constructed in accordance with details approved through application 22/02063/DIS.
7. No dwelling hereby permitted shall be occupied until the parts of the service roads and footways which provide access to it and the road layout allowing for the access / egress / and circulation of private motor vehicles and service vehicles so they may enter and exit the public highway in forward gear have been constructed surfaced and drained in accordance details which have been submitted to and approved by the Local Planning Authority based on the principals of the layout as detailed on drawing no. LEVELS Rev 001B dated Feb 2021 and 020.01BL1A dated Sept 2020.
8. The development shall not be occupied until the traffic calming measures approved under application 24/01562/DIS have been completed. The measures shall be retained thereafter.
9. Development shall be carried out in accordance with the sight lines as approved in application 24/01562/DIS. The development / associated dwelling(s) shall not be occupied until those sight lines have been provided in accordance with the approved details. Nothing that may cause an obstruction to visibility shall at any time be placed or be permitted to remain within the visibility splays shown in the approved sight lines.
10. Development shall be carried out in accordance with the junction details as approved in application 24/01562/DIS. The dwellings shall not be occupied until that junction has been constructed in accordance with the approved details.
11. No dwelling hereby permitted shall be occupied until a Traffic Regulation Order has been secured from the Local Highway Authority for the implementation of double yellow lines on the southern side of Birch Close about its junction with the site access and its junction with Colwell Road and on Colwell Road about its junction with Birch Close; and the resultant on-street parking restrictions have been implemented.
12. The development hereby approved shall not be occupied until the highway improvements as detailed below have been carried out in accordance with details to be submitted to and approved in writing by the Local Planning Authority:

- Remodelling of the existing footway and kerb line adjacent to the south bound bus stop on Colwell Road to the south of Birch Close.
- The remodelling of the existing footway, kerb line and bus shelter to include for the provision of a new shelter on Colwell Common at the north bound bus stop on Colwell Road to the south of Birch Close.
- The provision of a pair of uncontrolled tactile pedestrian crossings at the junction of Martine Close with Colwell Road.
- The remodelling of the Colwell Lane / Silcombe Lane/ Princes Road junction to include for the uncontrolled pedestrian crossing facilities. It is anticipated that these works would take the form of uncontrolled pedestrian crossing point across each road. This will improve accessibility for all user groups into the town.
- Remodelling of the existing highway verge on the northern side of Colwell Road from the site of Kitts Cottage through to the northbound bus stop to provide for a 2.0m wide bituminous footway and all associated works (circa 100 linear meters).

The improvements shall be carried out in accordance with the agreed details prior to the occupation of the dwellings hereby permitted.

13. No dwelling hereby permitted shall be occupied until space has been laid out within the site in accordance with the ratios as required within Table 1 of Appendix 1 of the Local Authority Guideline for Parking Provision as Part of New Developments SPD January 2017 drawing in accordance with details that have been submitted to and approved by the Local Planning Authority in writing for cars to be parked based on the principals of the layout as detailed on drawing no. LEVELS Rev 001B dated Feb 2021 and 020.01BL1A dated Sept 2020. The spaces shall not thereafter be used for any purpose other than that approved in accordance with this condition.
14. Development shall be carried out in accordance with the Construction Management Plan approved under 22/01065/DIS.

The agreed facilities shall be installed prior to the commencement of development and shall be retained in accordance with the approved details during the construction phase of the development.
15. No new roads, footways, accesses or car parking areas shall be constructed until details of the design, surfacing and construction of any new roads, footways, accesses and car parking areas, together with details of the means of disposal of surface water drainage there from based on the layout as detailed on drawing no Proposed Site, Sept20D-Issue 18A have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
16. No dwelling shall be occupied until the parts of the service roads which provide access to it have been constructed surfaced and drained in accordance with details which have been submitted to and approved by the

Local Planning Authority based on the layout as shown on drawing no. Proposed Site, SEPT20G. Development shall be carried out in accordance with the approved details.

17. The development shall be carried out in accordance with the scheme of soft landscaping and street trees approved in accordance with application 22/02063/DIS. All planting in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the commencement of the approved development and any trees or plants which within a period of 5 years from the commencement of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
18. Development shall be carried out in accordance with the Ecological Management Plan approved through appeal reference 6000681.
19. Development shall be carried out in accordance with the mitigation and enhancement measures set out in the Preliminary Ecological Appraisal, dated June 2021.
20. The development hereby approved shall be carried out in accordance with the Arboreal Method Statement approved under application 22/01065/DIS.
21. The development hereby approved shall be carried out in accordance with the Construction Environmental Management Plan approved under application 22/01065/DIS.
25. From the date of this decision, no further development shall take place until a scheme for the drainage and disposal of surface and foul water from the development hereby permitted, has been submitted to and approved in writing by the Local Planning Authority. The details shall confirm the Wastewater Treatment Works (WWTW) that will treat drainage from the development. Development shall be carried out in accordance with the approved scheme, which shall be completed prior to the occupation of the houses hereby permitted and be retained thereafter.
26. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development within Classes A to F of Part 1 of Schedule 2 to that Order shall be carried out other than that expressly authorised by this permission.
27. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order, with or without modification), no additional windows/ dormer windows shall be constructed within the dwellings hereby approved.
28. Prior to the occupation of the dwellinghouses hereby approved, the first floor window on Plots 1, 7, 8, 9, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 32, 33

and 39-44, as shown on the submitted plans serving bathrooms shall be fitted with obscure glass with a glass panel which has been rendered obscure as part of its manufacturing process to Pilkington glass classification 5 (or equivalent of glass supplied by an alternative manufacturer), of which the cill of the only opening section shall be 1.7m above finished floor level. The window shall be retained to this specification hereafter.

29. No dwelling hereby permitted shall be occupied until a scheme to secure a pedestrian link between the approved development and Solent Gardens has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall detail the route of the pedestrian link, surfacing of paths, details of any boundary treatments/ fencing required to align the route, signage and a management regime. The approved scheme shall be implemented prior to the first occupation of any residential unit and shall be retained and maintained thereafter.