



Appeal Decision

Hearing Held on 18 December 2018

Site visit made on 18 December 2018

by AJ Steen BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2019

Appeal Ref: APP/A1720/W/18/3200928

Land off Sopwith Way, Swanwick, Fareham SO31 7AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Reilly Developments Ltd against the decision of Fareham Borough Council.
 - The application Ref P/17/0895/OA, dated 28 July 2017, was refused by notice dated 23 February 2018.
 - The development proposed was described as "the erection of up to 46 dwellings with associated parking, access, landscaping and surface water drainage (outline application considering access only)."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for outline planning permission, and the application form makes clear that approval is also sought at this stage for access of the development, but not for its layout, scale, appearance and landscaping. Drawings have been submitted showing the proposed access and layout along with street scenes. Other than in relation to the location of the proposed access, I have treated the layout and street scene drawings as illustrative.
3. The description of development was amended during the course of the application to reduce the maximum number of dwellings proposed to 42. I have considered the appeal on that basis.
4. A subsequent planning application has been submitted and refused by the Council that is not subject of this appeal. This was subject of a revised layout plan, 10354-PL-02 revision O and street scenes 10354-PL-04 revision C. The Council concluded that these amended drawings overcame the reason for refusal relating to the effect of the proposed development on ecology and biodiversity, and I do not see any reason to disagree with their conclusions in this regard. Given that the layout and landscaping are not matters to be considered at this stage, the revisions do not materially alter the form of the development. Consequently, I have considered these drawings in coming to my decision and will not consider the effect of the proposed development on ecology and biodiversity as a main issue.

5. A Unilateral Undertaking (UU) legal agreement under Section 106 of the Town and Country Planning Act 1990 (S106) was submitted at the hearing. This seeks to deal with the reasons for refusal relating to affordable housing, sustainable drainage systems (SuDS), ecology, open space, the safety and operation of the strategic and local highway network and education provision. In addition, it includes financial contributions toward avoidance or reduction measures relating to the effect of the development on the Solent Coastal Special Protection Areas (SPAs). There remains some dispute in relation to the effects on the highway network and there are additional implications as regard the effect on SPAs. Consequently, I will consider these under the main issues, with the remainder under other matters.
6. The revised National Planning Policy Framework (the Framework) was published during the course of the appeal. The Council and appellant had the opportunity to comment and I have taken its contents into account in coming to my decision.
7. A Local Plan Review has been published for consultation. However, I understand that it is currently undergoing substantial revision following publication of the Framework. Consequently, it can carry very little weight.

Main Issues

8. The main issues are:
 - whether the proposal would be in a suitable location in terms of access to services and facilities;
 - the effect of the proposed development on the character and appearance of the surrounding area;
 - the effect of traffic and parking relating to the proposed dwellings on the safe and efficient operation of the highway network in the vicinity of the appeal site; and
 - the effect of the proposed development on the Solent Coastal Special Protection Areas.
9. However, I first need to consider the approach to the decision in light of the planning policy context of the proposed development.

Reasons

Approach to decision making

10. I note that the Council are unable to demonstrate a five year supply of deliverable housing sites with a 20% buffer as required by the Framework. In these circumstances, the Framework states that the presumption in favour of sustainable development would normally apply. This would, ordinarily, mean that the policies which are most important for determining the application would be out-of-date. As a result, permission would be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. However, paragraph 177 of the Framework states that the presumption in favour of sustainable development does not apply where development requires Appropriate Assessment (AA) due to its potential impact on a habitats site.

11. In this case, the site is within the buffer zone of the SPAs. Following the decision in the Court of Justice of the European Union in the case of *People Over Wind and Peter Sweetman v. Coillte Teoranta*, it is clear that competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering at the Habitats Regulation Assessment (HRA) screening stage whether a plan or project is likely to have an adverse effect on a European Site. Where the likelihood of significant effects cannot be excluded, on the basis of objective information the competent authority must proceed to carry out an AA to establish whether the plan or project will affect the integrity of the European site, which can include at that stage consideration of the effectiveness of the proposed avoidance or reduction measures.
12. For this reason, I would be required to carry out an AA were I to decide to allow the appeal. Consequently, under paragraph 177 of the Framework, the proposed development cannot benefit from the presumption in favour of sustainable development. Nevertheless, the appeal needs to be considered under Section 38(6) of the Planning and Compulsory Purchase Act such that my decision must be made in accordance with the development plan, including the Fareham Local Development Framework Core Strategy (CS) and Local Plan Part 2: Development Sites and Policies (LP2), unless material considerations indicate otherwise.
13. Policy DSP40 of the LP2 sets out how the Council would deal with proposals when there is no five year supply of deliverable housing sites. Consequently, that is the principle policy against which the proposal needs to be assessed.
14. The amount of the deficit in the five year supply of deliverable housing sites was discussed at the hearing. At that time, the Council suggested that they had a supply of 4.5 years taking account of recent approvals, based on 2016 ONS household projections, but the appellant considered there was a greater deficit. I note that a more recent appeal decision¹ concluded that the best case assessment of supply would be 3.8 years derived from the 2016 ONS projections and worst case was around 2.5 years based on 2014 ONS projections, at 31 March 2018.
15. For the purpose of this decision, I don't think I need to conclude as to the amount of the deficit. This is because it is clear that there is not currently a five year supply of deliverable housing sites and the presumption in favour of sustainable development set out in the Framework does not apply for the reasons set out above. In addition, it is common ground between the parties that the proposal is relative in scale to the demonstrated five year housing land supply shortfall, such that the proposal would comply with the relevant criteria of Policy DSP40 of the LP2. I see no reason to disagree with their conclusions in this regard.

Location

16. The appeal site is located on the junction of Sopwith Way with Swanwick Lane that leads from Swanwick to Whiteley. Both settlements provide a number of services and facilities, with further services in Sarisbury to the south. There is linear residential development alongside most of Swanwick Lane from Swanwick to Whiteley. Sopwith Way provides access to NATS and Swanwick Lakes Nature Reserve, along with a number of houses to the opposite side of

¹ Appeal reference APP/A1720/W/18/3200409

the road from the appeal site. To the other side of the appeal site is New Road that has residential development up to the frontage of the appeal site with that road. To the opposite side of Swanwick Lane is further residential development, with further development behind.

17. Nevertheless, Sopwith Way is located away from the urban settlement boundaries as set out on the Proposals Map to the development plan and some distance from services and facilities located within those settlements. As such, it would not be well integrated with neighbouring settlements.
18. There are walking and cycling routes that link to services and facilities in Sarisbury and Swanwick, including public transport provision to larger centres. However, the distance of the appeal site from services and facilities means that occupants of the proposed dwellings are likely to rely on their cars for most trips.
19. I understand that there have been other developments approved away from settlement boundaries, but I have limited information on those cases. In any event, I need to consider the proposed development on its individual merits.
20. For these reasons, I conclude that the proposed development would be remote from services and facilities and the urban settlement boundaries of the closest settlements. Consequently, the proposed development would be contrary to Policy DSP40 of the LP2 that requires development be located adjacent to and well related to urban settlement boundaries and that the development should be well integrated with the neighbouring settlement. In addition, it would not comply with Policies CS2, CS5, CS6 and CS9 of the CS and DSP6 of the LP2 that seek development to be located in accessible areas within settlement boundaries, including the Western Wards and Whiteley, and give priority to the reuse of previously developed land within urban areas.

Character and appearance

21. The surrounding area comprises a rural landscape of predominantly small scale fields, similar to those comprising the appeal site, within a woodland framework along with a mix of development fronting the roads. Development on Swanwick Lane and adjacent side roads comprise a mix of dwelling sizes and types, along with the substantial NATS complex at the end of Sopwith Way. Most residential properties adjoining the appeal site have substantial gardens that results in a spacious, semi-rural character to the area.
22. The illustrative layout plan suggests that the development would comprise a mix of semi-detached and detached houses with gardens around a cul-de-sac layout on considerably smaller plots than others neighbouring the site. There would be space around the site to increase tree planting and landscaping, along with a buffer to the adjacent Swanwick Nature Reserve.
23. Nevertheless, the illustrative layout would suggest the development would have a suburban character and appearance that would be an amorphous urban form. There are developments of a similar suburban style, but to a smaller scale, in the surrounding area, including over Swanwick Lane. However, the development proposed would be substantial and its form would not reflect the spacious, semi-rural character and appearance in the immediate vicinity of the site.

24. For these reasons, I conclude that the proposed development would harm the character and appearance of the surrounding area. As such, it would not comply with Policy DSP40 of the LP2 that seeks proposals to be sensitively designed to reflect the character of the neighbouring settlement and minimise any adverse impact on the countryside. In addition, it would conflict with Policies CS14 and CS17 of the CS that seek a high quality of design, including respecting the key characteristics of the area and protecting the countryside from development that would adversely affect its landscape character and appearance.

Highways

25. Sopwith Way is a busy access route to NATS when staff are coming and going from their work shifts. However, it is a wide road with space for vehicles to pass even with some parking to the side. I have not been provided with evidence to suggest that the junction of Sopwith Way and Swanwick Lane would not be able to cope with the additional traffic arising from the proposed development.

26. The proposal would result in a substantial development, but the illustrative layout suggests that it would be provided with parking to meet the needs of the development proposed. I note that more visitor parking spaces would be provided for the proposed development than are required by Council parking standards.

27. As a result of this, I conclude that the payment toward a Traffic Regulation Order is not necessary to make the development acceptable in planning terms, so would not meet the tests set out in the Framework. As a result, the proposed development would comply with Policy DSP40 of the LP2 insofar as it requires proposals not to have unacceptable traffic implications. In addition, it would not conflict with Policy CS5 of the CS insofar as it seeks development proposals not to adversely affect the safety and operation of the local road network.

Solent Coastal Special Protection Areas

28. The appeal site is located within the buffer zone of the Solent Coastal SPAs such that the proposed development, in combination with other projects, would lead to additional pressures from recreational disturbance on those areas. The UU submitted would provide contributions toward the Council's costs in maintaining and managing the effect on these areas. Nevertheless, for the reasons given above I would need to complete an AA in relation to the effect of the development on the SPAs were I to consider allowing the appeal.

29. As I have concluded that the proposed development would conflict with other development plan policies, I have not completed an AA and cannot confirm that the financial contributions in the UU would provide adequate mitigation of any effects of the development on the SPAs. On that basis, I conclude that the proposed development would have a harmful impact on the SPAs such that the proposal would conflict with Policies CS4 and CS6 of the CS, Policies DSP13 and DSP15 of the LP2 and the Framework. These policies seek to protect SPAs, which are nature conservation sites of international importance, including requiring adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of SPAs.

Other matters

30. The proposal would contribute up to 42 dwellings to the supply of housing and could be delivered quickly. Taking account of the lack of a five year supply of deliverable housing sites, this is a matter of considerable weight.
31. The development would provide jobs during construction and future residents would support services and facilities within surrounding settlements. The proposed dwellings would be energy efficient. The development would contribute Community Infrastructure Levy to support local infrastructure to meet the needs of the proposed development.
32. The UU would ensure provision of affordable housing and provides mechanisms to determine the mix and provision of these dwellings. This provision would meet the requirements of Policy CS18 of the CS relating to provision of affordable housing, and would contribute toward the need for affordable housing in the area. As a result, the S106 legal agreement meets the requirements of Regulation 122 of the CIL Regulations in relation to the provision of affordable housing.
33. The UU would enable the provision of SuDS and open space on the site. These would provide for the drainage needs of the development and would provide open space to meet the needs of future residents of the proposed development. As such, they would meet the requirements of Policies CS16, CS20 and CS21 of the CS that seek to safeguard the use of natural resources, including water conservation, provide open space that meets the needs of residents of development and mitigate the impact of proposed development on infrastructure.
34. The UU would also secure contributions toward education provision. These are required to meet the needs of the development by Policy CS20 of the CS that seeks to mitigate the impact of proposed development on infrastructure.
35. Were I to allow the appeal, I would need to consider these contributions against the regulatory tests at section 122 of the CIL Regulations. Given that I have concluded the proposals would not comply with Policy DSP40 of the LP2, I need not consider this matter further. In addition, these contributions would be no more than is necessary to meet needs arising from the development. They are therefore a neutral factor in the overall planning balance.
36. The revised layout plan, 10354-PL-02 revision O, provides a buffer strip along the western side of the site to provide for great crested newts and reptiles, along with a 15m buffer to the north of the site. In addition, a report relating to ecological mitigation, compensation and enhancements has been submitted. These would provide connectivity for wildlife alongside the site and protect features of ecological value that would ensure the development would not adversely affect biodiversity and ecology in the area.
37. My attention has been drawn to the New Homes Bonus and Council Tax, but how they should be taken into account and their connection to the development is not clear. Planning Practice Guidance² states that it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body.

² Reference ID: 21b-011-20140612

Conclusion

38. For the reasons given above and taking all matters into account, I conclude that the development would be contrary to the relevant policies of the Council's development plan. Provision of housing, including affordable housing, even taking account of the deficit in meeting the five year supply of deliverable housing sites, that would be energy efficient, would not adversely affect biodiversity and ecology, and whose occupants would support services and facilities in the wider area, are not material considerations of such weight in this case as to warrant a decision other than in accordance with the aforementioned development plan. Consequently, the appeal should be dismissed.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Knappett BSc BTP MRTPI	Planning Consultant, Brian Jezeph Consultancy
Mark Smith BA MCIHT	Paul Basham Associates
John Whitton MLI	Portus + Whitton Landscape Architects
Graham Mulholland MCIOB	Director, Reilly Developments Ltd
Patrick Reilly	Director, Reilly Developments Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Andy Blaxland BA Hons DipTP DipMGT MRTPI	Adams Hendry Consulting Ltd
Rachael Hebden MA (Hons) MA (Hons) MRTPI	Case Officer, Fareham Borough Council

INTERESTED PARTIES:

John McClimont	Fareham Society
Mike Jones	
Peter Richards	Landowner

DOCUMENTS SUBMITTED AT THE HEARING:

- Document 1: Legal agreement under Section 106 of the Town and Country Planning Act and summary
- Document 2: Solent Coastal Special Protection Areas documents
- Document 3: Planning for Walking, CIHT, April 2015
- Document 4: Highways Rebuttal Note by Mark Smith, Paul Basham Associates
- Document 5: Response to Highways Rebuttal by Mr & Mrs Jones of Hazelbank, New Road

Richborough Estates