



Appeal Decisions

Site visit made on 11 January 2016

by Kenneth Stone BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 February 2016

Appeal Ref: APP/M1710/W/15/3134150

Land to the North of The Telephone Exchange, Lymington Bottom Road, Medstead, Hampshire GU34 5EP

- 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 Mr Mathew Newell against the decision of East Hampshire District Council.
 - The application Ref 39009/005, dated 23 March 2015, was refused by notice dated 7 July 2015.
 - The development proposed is described as 'residential development comprising 10 dwellings, open space, landscaping and associated works.'
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was submitted in outline with all matters reserved other than access. Indicative street scene and layout plans have been provided but these are only illustrative of one way in which development may proceed and whilst I have had regard to them this is only insofar as they are indicative and they are not of themselves determinative.
 3. At the time that the application was determined the operative government advice in relation to planning contributions for small developments lead the Council to not raise issue with the lack of contributions towards infrastructure and the provision of affordable housing. The appellant has provided a Unilateral Undertaking to secure affordable housing on the site. Since the determination the courts have ruled that the previous government advice should not be taken into account in determining applications. On this basis the Council now contend that financial contributions towards infrastructure should be secured. In response the appellant has provided a second Unilateral Undertaking making provision for financial contributions towards infrastructure with a request that I specifically address the requirement for each of the contributions. It is also noted that the Courts decision is pending an appeal and that the timing of that appeal and the adoption of a forthcoming Community Infrastructure Levy to be introduced by the Council would be material to my consideration.
 4. At the time of making my decision the Courts ruling still stands and the appeal has not been heard, furthermore the Council's Community Infrastructure Levy
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has not been introduced. I will return to the consideration of the planning obligations below.

Main Issues

5. On the basis of the above the main issues in this appeal are:
- Whether the proposal amounts to sustainable development, having regard to whether the Council can demonstrate a five-year supply of deliverable housing sites and the ability of the settlement to accommodate the development including whether the proposal makes adequate provision for any additional need for infrastructure, services and facilities arising from the development; and
 - Whether the development would be likely to increase the likelihood of flooding in the area.

Reasons

6. The appeal site is located on the west side of Lymington Bottom Road at its junction with Soldridge Road. The site forms part of a wider area of land currently in use for agricultural purposes, primarily pig farming. There are a number of storage containers, for the housing of pigs and other agricultural machinery on the site. The land rises towards the west and falls towards the south and east. There is mature vegetation around the boundaries that affords some screening of the site.
7. The southern boundary of the site abuts the telephone exchange which is the end of the settlement boundary for Four Marks and South Medstead as identified in the development plan. There was localised flooding of the highway on Lymington Bottom Road at the southern end of the site at the time of my site visit.
8. Planning law requires that development proposals should be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan for the area comprises the East Hampshire Local Plan: Joint Core Strategy (JCS) which was adopted in 2014, after the introduction of the National Planning Policy Framework, and the saved policies of the East Hampshire District Local Plan: Second Review, 2006 (LP). The LP is an older plan and is in the process of being replaced, it has less weight depending on its consistency with the Framework and I will address this where relevant on policies in the main issues.
9. The East Hampshire District Local Plan: Housing and Employment Allocations (Allocations Plan) has been the subject of an examination with the Examiner having proposed modifications but a final report has not been provided. The proposed modifications are out to public consultation. Given the advanced stage of the plan and the suggested modifications it has weight in my consideration of this appeal. There is also a Neighbourhood Plan for the area, Medstead and Four Marks Neighbourhood Plan 2015 -2028, which has been the subject of consultation, however this has not yet been the subject of examination and so the weight I attach to that is more limited.

Sustainable development

10. Policy CP1 of the JCS provides a presumption in favour of sustainable development which reflects the general presumption in the Framework. Policy CP2 sets out a spatial strategy for the whole of the joint area, and sets out a housing requirement of a minimum of 10,060 dwellings in the period 2011-2028; 2 725 of which are to be provided in a new eco-town at Whitehill & Bordon, which will provide for up to a maximum of 4 000 dwellings in total, the remainder to be planned beyond the plan period. Policy CP10 provides further detail on the housing provision and identifies allocations for the most sustainable settlements. This includes, amongst others, an allocation of a minimum of 175 dwellings at Four Marks/South Medstead. The policy states that housing should be accommodated within existing settlement policy boundaries in the first instance. Policy CP19 defines the area outside of settlement policy boundaries as being in the countryside which it seeks to protect for its own sake.
11. The JCS did not review settlement policy boundaries and therefore those shown on the proposals map and associated with saved policy H14 in the LP are still part of the development plan. Policy H14 of the LP protects the countryside similarly to policy CP19 in the JCS; it is still up to date and consistent with the Framework and I afford it full weight. The JCS indicated that, where appropriate, settlement policy boundaries would be reviewed in either the Allocations Plan or Neighbourhood Plans. In the case of this settlement neither the Allocations Plan nor the Neighbourhood Plan are suggesting changes to the settlement policy boundary in the vicinity of the appeal site.
 - i) *5 year Housing Land Supply*
12. The appellant has provided a report by Intelligent Land to assess the housing land supply position of the council. This suggests the supply figure should be calculated on an aggregated basis, for the whole of the development plan area, that it should use the Sedgefield method and that a 5% buffer is appropriate. The Council have provided the East Hampshire Five Year Housing Land Supply (as of 1st April 2015) published in July 2015 (5 YR HLS) as the basis of its evidence. Whilst within that document the Council appear to prefer the disaggregated figure for the district, excluding the National Park area, in their appeal statement they identify that on an aggregated approach a five year supply can be identified across the whole JCS area. The Council's assessment of the supply figure seeks to rely on the Liverpool method and with a 5% buffer.
13. There is therefore no dispute between the parties as to the buffer to be applied or that the requirement should be considered across the whole JCS area. The remaining areas of dispute fall to the methodology to use, Sedgefield vs Liverpool, and the extent to which the allocations identified by the Council will be delivered within the five year period.
14. There have been a number of recent appeals in the area that have adopted different approaches and no consistent approach has been confirmed. The appellant relies on the advice in the Planning Practice Guidance (PPG) which suggests that local planning authorities should aim to deal with any undersupply within the first five years of the plan period where possible. Thus appearing to advocate the Sedgefield method. However, even following this advice there is no clear consistency within the appeal decisions as each

Inspector has determined the appeals on the basis of the information before them.

15. The PPG does not require the use of the Sedgefield method and advises that authorities should 'aim' 'wherever possible' to deal with any undersupply in the first five years. In this case the Council argue, with some justification in my view, that the JCS was found sound on the basis of its approach to the use of the Liverpool method and that this forms a fundamental approach to the plan process. The JCS identifies a significant development at Whitehill & Bordon on which it relies to achieve its housing targets. This makes up a significant element of the overall housing figure and given the scale of development, which will add further housing after the plan period, has been identified as resulting in completions towards the middle and end of the plan period.
16. I also note that in conducting the examination in to the emerging Allocations Plan the examiner confirmed that the overall requirement and methodology and the buffer used at the time of the JCS should continue to be applied. Once adopted, which is highly likely following the proposed modifications, this part of the development plan, as it will become, will also be predicated on the Liverpool method.
17. On the basis of the JCS being found sound using the Liverpool method, the Allocations Plan being considered on the basis of the Liverpool method, a significant part of the housing requirement being met through a substantial strategic allocation for a new eco town I am satisfied that the use of the Liverpool method is appropriate. I give significant weight to considering the housing land supply figure for the area in a consistent manner with that on which the development plan was found sound.
18. Moving to the deliverability of sites, the appellant has provide detailed evidence on a significant number of larger sites which it contends demonstrates that the Council is over optimistic in its assessment of the timing of their contribution and suggests that the figures for the supply of housing in the 5 YR HLS should be reduced by, in the region of, 1 100 units. This would significantly reduce the Council's supply figure. The Council assert that the deliverability of the sites in the 5 YR HLS was robustly tested and they stand by the figures provided in that document. To this end I note that in the Intelligent Land report that if the Liverpool method is applied to the reduced figure with a 5% buffer, table 11 and Appendix A, that there is still a 5.08 years supply of deliverable sites. This figure is based on accepting all of the appellant's reductions in the supply, which would be a worst case scenario. I do not therefore need to go into the detail of those assessments to further analyse the detail as to do so would only improve the five year supply figure if I were to discount any of the reductions.
19. On the basis of the above I conclude that on the balance of probabilities at this point in time the Council can demonstrate a five year supply of deliverable housing sites. Policies for the supply of housing in the development plan are therefore up to date and are given full weight.
ii) ability of settlement to accommodate development
20. Four Marks/MedStead is identified as a small local service centre in the sustainable hierarchy of settlements associated with Policy CP2 in the JCS. This is a third tier settlement, below market towns and large local service

- centres. The centre is defined based on the level of services which it accommodates and the population. Whilst the population is at the upper end of the range and therefore the centre is large for its designation, the level of services provided is some what limited.
21. The settlement hierarchy and spatial strategy seek to identify a framework for the size and location of development, which when associated with complementary policies for the protection of the countryside, establish a sustainable pattern of development within the plan area. This sustainable development seeks to protect areas outside the areas defined for development to safeguard the countryside by avoiding development that is not required in countryside locations.
 22. As I have found that the Council can demonstrate a five year housing supply and these policies for the supply of housing are up to date it follows that development that conflicts with the policies and are not within the defined settlement policy boundaries would not achieve the sustainable pattern of development advocated in the plan.
 23. Four Marks/Medstead has an identified allocation of a minimum of 175 new dwellings; the Council have provided evidence to confirm that there are permissions which bring the housing provision in the area to well in excess of this figure, in the region of 316. On this basis neither the Allocations Plan nor the Neighbourhood Plan are proposing allocating additional sites or extending the settlement policy boundary to provide additional sites.
 24. The additional 175 dwellings to be provided across the plan period was the subject of a sustainability appraisal. The fact that this target has been met and substantially exceeded early in the plan period demonstrates the pressure that the settlement is under, and which is likely to continue. The small level of services that are within the village are under significant pressure given the size of the settlement and the pace of increase at this point in time. This adds to the pressure on services and facilities including in terms of public open space, community facilities and education. The Council have identified the policies, CP16 and CP18 in the JCS and supplementary guidance that sets out the requirements.
 25. The Council have specifically identified proposals for a new youth centre at Uplands Lane, Four Marks and improvements to the Four Marks skate park and improved access and parking at the recreation ground that any contributions could be put towards. The Council have confirmed that there has not been more than five contributions for any of these works. The appellant has provided a second Unilateral Undertaking to address the requested provision. The scale of the financial contribution is calculated on the basis of the supplementary planning document advice and is related to the occupation of the dwellings. I am satisfied that the development would lead to additional pressures on these facilities and that the contributions are therefore justified. The proposals are reasonable, necessary and directly related to the development and meet the tests set out in regulation 122 of Community Infrastructure Levy Regulations 2010 as amended and paragraph 204 of the Framework. This would to some extent mitigate the impact of the development on the settlement.
 26. The appellant has also provided a Unilateral Undertaking which would provide for four affordable units on the site. This would further assist in the

settlements ability to absorb the development. The JCS housing need identified that affordable housing was a significant issue. The provision of additional affordable housing is seen as a benefit of the scheme to which I give significant weight.

27. The Unilateral Undertakings do not provide for an educational contribution and I note from other recent decisions that there have been more than 5 contributions for such facilities in the area and as such a financial contribution could not be requested under the terms of the CIL Regulations.
28. Whilst there is some proposed mitigation through financial contributions to open space and community facilities these would not address all of the matters related to the expansion of the settlement beyond its settlement boundaries in conflict with the plan policies.

iii) Sustainable location

29. The appeal site is located at the periphery of the settlement some distance from the main centre of the service area located along the A31 at Four Marks, approximately 1.4 Km away. The route to access this also includes a relatively steep walk and crossing of a major road, the A31. This is not easily accessible by foot. The appellant suggest that the site is within 800m of existing services but these provide a very limited range of goods and services. This limited range and the distance is unlikely to encourage people accessing them by foot or other means of transport other than the private motor vehicle. It is at the outer range of the distance identified in Manual for Streets, as referred to by the appellant, and does not demonstrate the site is sustainably located.
30. The Council point out that the Four Marks Primary School is 2 Km away. At the site visit I was requested to visit the primary school at Medstead, this was some distance on country roads, including a number of inclines. Because of the distance and nature of the routes available to access the schools it is unlikely that new residents would access them by foot or cycle and they would be most likely reliant on the private motor vehicle for these journeys.
31. On balance I conclude that the site is not sustainably located in relation to access to other services and facilities necessary to support the day to day needs of the residents and would be likely to result in residents being reliant on the private motor vehicle.

iv) Conclusion

32. In conclusion I am satisfied that the Council can demonstrate a five year supply of deliverable housing sites and therefore the policies related to the supply of housing are up to date. The proposed development would be outside the existing settlement policy boundary and within the open countryside and would therefore conflict with policies CP1, CP2, CP10 and CP19 of the JCS and policy H14 of the LP which seek to allocate and direct housing development towards sustainable settlements and away from the open countryside. The proposal would not be sustainably located and the development would add to additional burdens on the settlement which would not be fully mitigated by the proposals and compromise the settlements ability to absorb new development. Whilst there are Unilateral Undertakings to address some of the additional infrastructure requirements and to provide affordable housing, these do not outweigh the harm resultant from the development and the conflict with policy.

Flood Risk

33. Policy CP25 in the JCS, amongst other matters, requires all development to ensure that there is no net increase in surface water run off and that development should be avoided in areas at risk of groundwater flooding and if that is not possible the development should be designed to incorporate flood resistance and resilience measures.
34. The appellant has provided a summary note for drainage, by Bellamy Roberts, in response to the council's appeal statement. That note includes microdrainage calculation outputs. The existing run off rate for the site has been calculated and it is confirmed that the development would have a run off rate restricted to this number. Further the report states that a drainage system would be introduced based on infiltration principles, to reduce the run off rate to zero. The Council are concerned given the heavy clay soils that infiltration and percolation may not be effective and that they would wish to see geotechnical investigations to demonstrate the effectiveness of any such systems. In this regard the appellant has used data from sites close by, but has not identified which sites. I do however accept that such detail could be secured by way of appropriate condition requiring the system details to be submitted and approved prior to the commencement of development.
35. The appeal site is in flood zone 1 and is therefore not at risk of flooding as such. There are however localised flooding issues as was evidenced by the highway flooding at the time of my visit. The appellant has identified a balancing pond and provided information on levels and capacity that indicate that his would be below the level of the adjoining carriageway and would have sufficient capacity to accommodate the highway flooding. This would be a benefit of the scheme.
36. The foul water drainage would be addressed by an on-site treatment plant and the outfall treated water would be directed towards a shallow drainage field. Appendix 1 to the Drainage Note identifies this as outside the appeal site, however, it does fall within the blue line and so could be the subject of a planning condition.
37. On the basis of the above I am satisfied that the additional information required to ensure an appropriate drainage strategy would be provided could be secured by condition and therefore the proposal would not be likely to increase the likelihood of flooding in the area. It would not therefore conflict with policy CP25 of the JCS.

Other matters

38. The appellant contends that the site is untidy and has a negative impact on the character and appearance of the area. The site is presently used for agricultural purposes. There are a number of containers and other equipment spread around the site which contributes to its poor appearance. Also the ground is heavily churned, as is normally the case on intensively farmed pig enterprises. However, there is a degree of screening from mature vegetation around the site and given the location at the cross roads, with open fields to the north and east, the site maintains a rural character and appearance compatible with its surroundings.

39. The redevelopment of the site for housing would introduce a significantly greater amount of built development that would be higher, more intense and more urban in character. Whilst the screening of the mature vegetation would reduce this impact to some extent, the proposed development would be more intrusive than the existing structures and would not be compatible with the surrounding rural setting. I make this conclusion in the knowledge there are other areas of residential development in the surrounding area, including along Soldridge Road which adopt the frontage development proposed in the illustrative layout and in that regard that the suggested layout would reflect the character of those areas.
40. Overall the site is sensitively located at the edge of the settlement and presently maintains a gap between the settlement boundary and other dispersed developments in the countryside close by. The development of the site would start to coalesce those developments and thereby adversely affect the rural character of the countryside location. The appearance of the site at present does not provide justification for the further harm that would arise from the increased built development in this rural location outside the settlement boundary. This would conflict with the environmental role required of sustainable development in the Framework.
41. Concerns have been expressed about the impact of the development on the living conditions of surrounding residents. However, given the separation and land levels in the area I am satisfied that there would be no material harm on the living conditions presently enjoyed by occupants of surrounding properties.

Overall conclusions

42. On the basis of the above I conclude that the proposed development would not amount to sustainable development as required by CP1 of the JCS and the Framework. The Council can demonstrate a five year supply of housing and the appeal site is located outside the settlement boundary in an unsustainable location. Whilst the proposal would provide for additional housing units, including affordable housing units, these are small in number and would not outweigh the harm I have identified. The small improvement to highway flooding that would add to the positive benefits of the scheme similarly is not such to outweigh the harm identified.
43. For the reasons given above I conclude that the appeal should be dismissed.

Kenneth Stone

INSPECTOR