



Appeal Decisions

Hearing Held on 8-9 June 2021

Site visit made on 15 June 2021

by Stephen Wilkinson BA (Hons) BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th July 2021

Appeal Ref: APP/C1760/W/20/3260339

Land north of 11 Walworth Road, Picket Piece, Andover, Hampshire

Grid Reference: 439699, 147467

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Carrington, Foreman Homes against the decision of Test Valley Borough Council.
 - The application Ref 19/02332/FULLN, dated 23 September 2019, was refused by notice dated 31 March 2020.
 - The development proposed is residential development of 64 No. dwellings, associated landscaping, amenity areas and access from Walworth Road.
-

Appeal Ref: APP/C1760/W/20/3269880

3 Walworth Road, Picket Piece SP11 6LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Carrington, Foreman Homes against Test Valley Borough Council.
 - The application Ref 20/02970/FULLN is dated 26 November 2020.
 - The development proposed is demolition of No. 3 Walworth Road for the erection of 35 No. dwellings, landscaping and access off Walworth Road, Picket Piece SP11 6LU.
-

Decisions

Appeal A

1. The appeal is dismissed

Appeal B

2. The appeal is dismissed.

Applications for costs

3. In advance of the Hearing applications for costs were made by the Test Valley Borough Council against Foreman Homes in respect of both appeals. These applications are the subject of a separate Decision.

Procedural Matters

4. In respect of Appeal A – the Council consulted on a revised layout (drawing 19.074.02 H) which had formed the basis of a recently refused application

(21/00160/FULLN) on the same appeal site. I have taken into account the public comments received on these drawings in my decision. As the revisions are minor, I do not consider that the Wheatcroft¹ principles have been prejudiced.

5. Appeal B - this is an appeal in respect of non-determination. The Council has indicated that had it been in a position to determine the application it would have refused it for the same reasons that an earlier application on the same site had been refused (19/02408/FULLN). Details of each putative reason is included in the Council's statement.
6. In advance of the Hearing I wrote to the parties setting out how the separate reasons for refusal in respect of Appeal A and the putative reasons for refusal in respect of Appeal B would be addressed through the main issues. Both parties accepted this approach.
7. In my note I identified an issue in respect of the impact of the proposal on the living conditions of surrounding occupiers. On receipt of the evidence during the Hearing it is clear that this primarily refers to future occupiers of the proposed scheme and not those surrounding the site.
8. In advance of the Hearing the Council withdrew its fourth putative reason for refusal regarding Appeal B regarding surface water run off.
9. In advance of the Hearing, I received draft Section 106 agreements for each appeal. However, these had not been completed and I gave the appellants additional time to complete these. On 16 June, I received Unilateral Undertakings in respect of both appeals. I give further consideration to these later in this decision.
10. In advance of the decision being issued I sought the views of the main parties on the revised National Planning Policy Framework 2021 (the Framework) which was received after the Hearing had finished. I have updated references where I consider necessary, in respect of the comments received.

Main Issues

11. There are several main issues which are the same for both appeals. However, Appeal A has 3 distinct issues.

Appeal A

- The proposed location of development having regard to both local and national policies.
- The effect of the proposed development on the landscape character of the area, and
- Whether or not the appeal scheme would increase flood risk.

Appeals A and B

- The effect of the proposed development on the character and appearance of the area

¹ Bernard Wheatcroft Ltd v.SSE (JPL 1982 P37)

- The effect of the proposed development on the living conditions of future occupiers with particular regard to noise, the provision of private and public open space, parking, privacy and designing out crime.
- The effects of the proposal on nutrient levels within the Solent estuary
- The effects of the proposals on biodiversity with particular regard to protected species
- Whether or not the proposals include adequate provision for the necessary infrastructure directly required by this development, and
- Whether a policy compliant amount of affordable housing has been included within the scheme.

Reasons

Context of the appeal sites

12. Both appeal sites largely fall within a strategic housing allocation referred to in Policy COM6 in the Revised Local Plan 2016 (the RLP). The allocation includes up to 400 additional new homes and requires new development to adhere to various requirements of which the provision of landscaping and the provision of public open space are referenced. It would appear that the allocation has many landownerships and individual sites are coming forward as option agreements are secured.
13. Whilst not all of appeal site A lies within the site allocation the whole of appeal site B does.

Appeal A

Location of development

14. The appeal site lies towards the eastern edge of the Picket Piece housing allocation but the southern end of the site, accounting for around 25% of the total area, lies outside the housing allocation boundary and in the countryside as defined by Policy COM2.
15. Around the appeal site, Picket Piece gives way to open countryside characterised by detached dwellings, set back from the road frontage in generous plots. The settlement boundary broadly reflects the northern boundaries of these detached dwellings but extends eastwards to include sites of sporadic commercial development on the north side. In contrast, on the south side there are thick belts of trees and hedgerows around Ox Drove and open fields.
16. The boundaries of the housing allocation are designed to reflect this character and step away from the northern edge of Walworth Road to reflect the form of development on its south side by Ox Drove. This is evident from the rationale which the Council used to inform the extent of the site allocation for the RLP².
17. Whilst the parties disagree on an appropriate description of the site's context having heard the evidence, I conclude that it is semi-rural in character. Its location contrasts with site's further west along Walworth Road, which lie opposite the new suburban housing development at Locksbridge Park. The

² Appendices to Council Statement of Case

location of new development across the southern section of the site and towards the road frontage would adversely impact on this semi-rural character at this point in Walworth Road.

18. The appellant has not provided a clear justification, other than generalised references to the National Planning Policy Framework's (the Framework) definition of sustainable development on why new development should be allowed in the countryside beyond the housing allocation.
19. Furthermore, the appellant has drawn my attention to a range of decisions of my Inspector colleagues where housing development has been allowed on sites within the district which straddle the site allocation and settlement boundary. I recognise the importance of consistency in appeal decisions but I do not know the details of these sites including their exact location and the form of suggested development.
20. For these reasons, I conclude that the appeal scheme conflicts with Policy COM2. None of the exceptions included in this policy apply to the appeal scheme.

Landscape character

21. The appeal site lies close to the top of a steep rise on Walworth Road by its junction with Ox Drove. The site slopes down towards the rail line which forms its northern boundary. The topography is important to the Council's objection as it seeks to retain a protective band of landscaping on the southern end of the site to screen views from Walworth Road across the site.
22. The proposed scheme would have a localised impact on landscape with views restricted to the approach from along Walworth Road. The location of proposed plots along the frontage would broadly follow a notional building line drawn from the recently completed properties at No.10 Walworth Road and the location of the existing dwelling at No.11. This alignment continues the suburban form of development located further west and is not appropriate for the site given its location.
23. Policy COM 6 includes a requirement for a landscaping belt along Walworth Road designed to complement that already permitted north of Ox Drive and Policy E2 requires the protection, conservation and enhancement of landscape.
24. Incidental landscaping is proposed between Walworth Road and the short access/turning head serving plots 54, 55 and 56 on the frontage. The extent of development close to the frontage involving 3 detached dwellings and a service road, would adversely impact on the character of the area in contrast with the openness of the opposite side of the road.
25. For these reasons, I conclude that shortcomings in the scheme design undermine the appellant's statement that it has been informed by a landscape led approach. Accordingly, I conclude that the scheme is in conflict with Policy E2 which requires new development to respect the character of the surrounding area.

Flood risk

26. The Lead Local Flood Authority (LLFA) has expressed reservations on the design of the surface water drainage scheme. These objections concern the

extent and location of permeable paving, cellular storage, size of the pipe work and maintenance regime. Revised comments from the LLFA were received in the week before the Hearing and I received oral representations from the appellant that this matter had been resolved satisfactorily. However, in the absence of written evidence the Council had been unable to consider these comments.

27. Without an evidenced commentary from the LLFA it is unclear whether its comments would be qualified, for example by requesting conditions which could affect the final scheme design.
28. As this is an application for full planning permission it is important that matters such as this are resolved in advance of a final decision rather than being left to a condition.
29. In the absence of evidence from the LLFA that the proposed scheme is acceptable, I conclude that the proposals are in conflict with Policy E7 of the RLP which requires new development to comply with national policy and guidance regarding the protection of land from flood risk.

Character and appearance

30. There are a number of differences between the parties in respect of how the proposed scheme adheres to the principles identified under Policy E1 of the Local Plan which requires development to be of high quality and local distinctiveness. These broadly accord with the National Design Guidance.
31. The proposed scheme would use the existing vehicular access serving the scheme at No.10 Walworth Road. This is an important matter which invites comparison between the 2 schemes.
32. The areas of public open space within the proposed scheme are incidental and are of limited size in contrast to the large areas devoted to parking. In contrast the permitted scheme at No.10 includes large areas of communal space within the centre of the site.
33. Even allowing for the orthogonal approach advocated by the appellant the relationship of the 2 blocks of flats perpendicular to each other appears cramped and out of character with the wider context of this site. I acknowledge the importance of a linking element between the 2 sites but the integration of them would be better achieved through the same elevational treatment of the flatted blocks within both schemes.
34. For the same reason, a common palette of materials could have been more evenly distributed across the appeal scheme to identify with the existing scheme. The dominance of brick for the elevations within the proposed scheme adversely contrasts with the more varied palette which involves weather boarding in the existing.
35. I acknowledge that the scheme may be at a slightly lower density than that for the neighbouring site but this demonstrates the limitations of density as a planning device to adequately inform design. There are limitations to the scheme design which largely result from the configuration of this site and its relationship within the wider site allocation. However, a more thorough attempt could have been to ensure the 2 schemes could have read as one.

36. For the above reasons I conclude that the proposal would be in conflict with Policy E1 of the RLP and the provisions of the revised Framework (2021) and National Design Guidance.

Living conditions for future occupiers

37. There are a number of differences between the parties in respect of this main issue concerned with noise, the provision of private and public open space, parking and privacy with reference to the policies of the RLP.

Noise

38. The site's southern and northern boundaries include Walworth Road and the railway. They each represent sources of noise from traffic along Walworth Road and trains using the rail line which is at grade on the northern edge of the site. An additional source of noise would be the activities from the proposed 'teen' play space.
39. A noise assessment report was submitted with the appeal which details appropriate mitigation measures. The Council's statement of case indicated that there remained concerns over the implementation of these.
40. During the Hearing the Council confirmed that the mitigation measures which include mechanical ventilation and double glazing would be acceptable and could be addressed by condition included in a decision, were I minded to allow this appeal.
41. For the above reason and subject to the inclusion of an appropriately worded condition, were I minded to allow this appeal, the proposals would not conflict with Policy E8 of the RLP.

Public open space

42. The Council's objection concerns the lack of public amenity space across the appeal site in line with Policies COM6 and LHW1.
43. Matters are complicated regarding this issue because, the proposed block of flats (plots 18-23) would be located on an area of public open space included in the permitted scheme at No10 Walworth Road. Furthermore, the Council are relying on inclusion within the appeal scheme of open space required to address the open space needs of a neighbouring site which still has an outstanding planning agreement.
44. The appellant agrees to the principle of this provision but the design of the appeal scheme does not adequately address this requirement given that the total requirement amounts to around 0.24ha and 0.32ha for children and teenagers of informal open space respectively.
45. The appeal scheme includes a pocket park and a 'teen' play area and the appellants argument is that the quality and range of spaces provided within the scheme would compensate. However, the public open space in front of the flatted blocks would become the domain of the flats rather than being public open space.
46. The appellant has indicated that they could provide financial contributions to address this under provision, in line with Policy LHW1 through the completion

of the Undertaking. For this reason, the scheme would not conflict with Policy LHW1.

Private open space

47. The Council does not have any minimum adopted standards for the depths of rear gardens to prevent overlooking between properties to maintain privacy.
48. There are several plots where privacy would be infringed. In particular these would include the relationship of plots 47-49 to plot 51 and between plots 55 and 56 with plot 57.
49. I regard these as significant shortcomings in the proposed design which would result in overlooking and loss of privacy and should not be regarded as inevitable in a typical estate design nor should they replicate similar relationships within the layout of the neighbouring scheme as the appellant has suggested.
50. Furthermore, it is unclear from the layout plan where the private open space designed to serve the flats would be located given that it appears that in part some of this may be required to address the public open space deficiency. The Juliette balconies would not suffice in this regard.
51. For these reasons, I conclude that the proposals would be in conflict with Policy LHW4 which requires the protection of privacy and adequate provision of private open space.

Parking and access

52. The Council has identified shortcomings in the relationship of parking spaces to dwellings and the use of tandem parking layouts which it considers could lead to unnecessary on street parking leading to conflicts between highway users.
53. Some of the parking spaces identified by the Council would lie a short distance from the properties they serve, for example, for plots 28 and 29. Other matters relate to the provision of tandem parking. Given that only several residential plots are affected in this way, there would only be limited manoeuvring arising from them which could pose threats to highway safety.
54. During the hearing there was discussion on how a link extending from the appeal site into other sites to the east within the housing allocation included in Policy COM6 could be enabled by this development. The appellant identified several options and although there was disagreement on the form of a suggested condition which could enable this, I am satisfied that were I minded to allow this appeal, an appropriate condition could be drafted to resolve this matter.
55. For these reasons, whilst there are deficiencies in the parking layout I do not regard the scale of these as representing a significant conflict with Policy T2.

Designing out Crime

56. The Council has cited shortcomings in the scheme design which could provide opportunities for crime. Many of these such as the location of, Juliette balconies serving ground floor flats and flank ground floor windows could be resolved

through planning condition of similar wording to that suggested by the appellant during the Hearing and/or the use of landscaping conditions to define the limits of communal space for the flatted blocks.

57. However, other matters such as the short run of pedestrian walkways located around Plots 26, 27 and 30 and walkways between the terraces to access parking have limited opportunities for surveillance creating opportunities for crime. Furthermore, the parking areas to the rear of plots 33-42 are accessed via short paths and have limited surveillance from residential properties. These matters cannot be addressed through planning condition.
58. For the above reasons, I conclude that the appeal scheme would conflict with Policy CS1 of the RLP which requires new development to deliver safe and liveable environments which take account of the need to reduce opportunities for crime and anti-social behaviour.

Conclusion on this main issue

59. The scheme includes a range of shortcomings and whilst matters such as the impact of noise and the provision of public open space could be addressed through planning condition or agreement others such as the loss of privacy and the potential for anti social activity are in conflict with Policies CS1 and LHW4 of the RLP and would adversely impact on the living conditions of future occupiers.

Biodiversity

60. The proposed scheme was accompanied by surveys to identify the extent of biodiversity across the site. It is known that the site is used for bat foraging and provides habitats for slow worms, hazel dormice and Pyramidal Orchids. The first 3 of these are protected species or are priority habitats and together reflect the site's important biodiversity.
61. Many of the surveys are either dated or incomplete and would not inform a clear understanding of the location and extent of habit and local populations of these protected species. For example, good practice requires that bat surveys³ are completed each month between April to September but instead just 3 surveys were provided. Whilst I accept that the appellant has a good understanding of the local area given their involvement with other housing schemes, there was a lack of evidence for me to consider for this appeal.
62. The scheme has been designed to increase habitat for species such as the Hazel Dormouse with increased planting along the north and eastern boundaries. However, it is unclear the extent of the local population which could be affected by construction and the implementation of the appeal scheme. The last surveys were completed for the appeal site in 2015/16 despite the appellant knowing there were some local populations. The lack of evidence in this respect would contravene Government advice⁴.
63. The appellant acknowledges that the impact of the proposal could result in a net loss of biodiversity across the site of both slow worms and pyramidal orchids and in response has proposed translocation to other sites at Diamond Jubilee Woods and Danebury Hill Fort respectively. These would if implemented

³ Bat Conservation Trust Guidelines

⁴ Circular 06/2005 paragraph 99

achieve a net gain in biodiversity in line with the Guidance⁵. However, no agreement confirming this proposal, was before me during the Hearing to confirm this.

64. The Council's adopted policy requires evidence of how the mitigation hierarchy is being addressed and what survey information has informed each stage. This approach is supported by guidance from Natural England⁶.
65. The appellant has sought to substantiate their approach with reference to the 'tests' included in Policy E5 with reference to the social and economic benefits of the scheme, the suggested mitigation measures and additional planting to create habitats. However, for the reasons as stated above, and given the Council's housing land supply position these are insufficient to mitigate for the harm which is likely to result for the site's biodiversity.
66. For these reasons, given the limited survey information, the lack of basic details in respect of the suggestions regarding proposed mitigation and translocation of protected species, I conclude that the proposed scheme conflicts with Policy E5 of the Local Plan and national guidance.

Nitrate Neutrality

67. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage⁷.
68. The waters of the Solent estuary are internationally important for its wildlife and are protected under the Water Regulations⁸ and the Conservation of Habitats and Species Regulations⁹ as well as national protection for many parts of the coastline and the sea¹⁰.
69. The estuary suffers from high levels of nitrate and phosphorous input which are leading to eutrophication at designated sites. This adversely impacts on protected species and habitats within the Solent and in particular on the Solent and Southampton Water SPA and Ramsar, Portsmouth Harbour SPA and Ramsar, Chichester and Langstone Harbours SPA and Ramsar, Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC and Solent and Dorset Coast SPA.
70. Although the responsibility of completing an Appropriate Assessment falls to me regarding whether the scheme would achieve nitrate neutrality, as I am dismissing this appeal, I do not have to complete this exercise.

Infrastructure

71. The appeal scheme was accompanied by a Unilateral Undertaking which includes financial contributions towards secondary education, compensatory open space, highway infrastructure improvements to the village hall and contributions towards affordable housing. This would address the reasons 11, 12, 14, 15 and 16 of the Council's refusal. The Undertaking includes reference

⁵ ID 8-26 2019-0721

⁶ Natural England Advice on Achieving Nutrient Neutrality Version 5 June 2020

⁷ People Over Wind and Peter Sweetman v Collite Teoranta ECJ (2018) C-323/17

⁸ The Water Environment (the Water Framework Directive) (England and Wales) Regulations 2017

⁹ Conservation of Habitats and Species Regulations (England and Wales) Regulations 2017

¹⁰ Wildlife and Countryside Act 1981, Countryside and Rights of Way Act 2000 and Coastal Access Act 2009, Natural Environment and Rural Communities Act 2006.

to how nitrate neutrality could be delivered and includes the outline of a secondary agreement related to the use of land at Roke Manor Farm.

72. The Council has submitted a Community Infrastructure Levy compliance schedule. This identifies how each of the suggested contributions is supported by adopted policy included in the RLP.
73. Overall, I am satisfied that the obligations included in the Undertaking are related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme in line with paragraph 57 of the Framework 2021.

Conclusions in respect of Appeal A

74. A significant proportion of the appeal site lies in countryside as defined by Policy COM2 and outside the housing allocation included in Policy COM6. In advancing an argument in favour of the appeal scheme the appellant has drawn my attention to other appeal schemes in the Borough which have been allowed by my Inspector colleagues. However, I do not know of these sites or the detail of each scheme although I acknowledge that development beyond the settlement boundary is not in itself an argument against a proposal unless harm can be identified.
75. In contrast to those appeals cited by the appellant there are significant and important shortcomings in the design and related areas which would result in harm; these would be in conflict with policy. Some of these matters do not accord with the principles identified in National Design Guidance and the revised Framework (2021).
76. Shortcomings in the scheme relate to its impacts on the area's character and appearance, the living conditions of future occupiers and inadequate measures that would fail to either conserve or enhance protected species and habitats.
77. I regard the range of infrastructure included in the Undertaking as neutral as these measures are required for this development in line with adopted policies.
78. Accordingly, whilst I understand the appellants suggestion that the Council's robust 5 year housing land supply is not a reason in itself to warrant a dismissal there are a sufficient grounds in this case, to substantiate my decision.
79. I have considered the appellants arguments that the proposed scheme would make a positive impact on the economic, environmental and social aspects of sustainable development as defined by the Framework in securing the Government's target of 300,000 houses annually. Whilst this is an important material consideration it is not outweighed by the policies of the RLP when read as a whole.
80. For the above reasons the appeal is dismissed.

Appeal B

Nitrate Neutrality

81. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European

Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage¹¹.

82. The waters of the Solent estuary are internationally important for its wildlife and are protected under the Water Regulations¹² and the Conservation of Habitats and Species Regulations¹³ as well as national protection for many parts of the coastline and the sea¹⁴.
83. The estuary suffers from high levels of nitrate and phosphorous input which are leading to eutrophication at designated sites. This adversely impacts on protected species and habitats within the Solent and in particular on the Solent and Southampton Water SPA and Ramsar, Portsmouth Harbour SPA and Ramsar, Chichester and Langstone Harbours SPA and Ramsar, Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC and Solent and Dorset Coast SPA.
84. Although the responsibility of completing an Appropriate Assessment falls to me regarding whether the scheme would achieve nitrate neutrality, as I am dismissing this appeal, I do not have to complete this exercise.

Biodiversity

85. The proposed scheme was accompanied by surveys to identify the extent of biodiversity across the site. It is known that the site is used for bat foraging and provides habitats for slow worms and hazel dormice. Each of these are protected species and together reflect the site's important biodiversity.
86. Many of the surveys are either dated or incomplete and would not inform a clear understanding of the location and extent of habit and local populations of these protected species. For example, the bat survey would be required to complete monthly surveys between March to September but instead just 3 surveys were provided. Whilst I accept that the appellant has a good understanding of the local area given their involvement with other housing schemes there was a lack of evidence for me to consider for this appeal.
87. The scheme has been designed to increase habitat for species such as the Hazel Dormouse with increased planting along the north and eastern boundaries. However, it is unclear the extent of the local population which could be affected by construction and the implementation of the appeal scheme. The last surveys were completed for the appeal site in 2015/16 despite the appellant knowing there were some local populations. The lack of evidence in this respect would contravene Government advice.
88. The appellant acknowledges that the impact of the proposal could result in a net loss of biodiversity across the site of slow worms and in response has proposed translocation to other sites at Diamond Jubilee Woods.
89. The Council's adopted policy requires evidence of how the mitigation hierarchy is being addressed and what survey information has informed each stage. This is supported by guidance from Natural England. Full details are required in respect of these matters before consideration could be given to the suggested Condition 13.

¹¹ People Over Wind and Peter Sweetman v Collite Teoranta ECJ (2018) C-323/17

¹² The Water Environment (the Water Framework Directive) (England and Wales) Regulations 2017

¹³ Conservation of Habitats and Species Regulations (England and Wales) Regulations 2017

¹⁴ Wildlife and Countryside Act 1981, Countryside and Rights of Way Act 2000 and Coastal Access Act 2009, Natural Environment and Rural Communities Act 2006.

90. The appellant has sought to substantiate their approach with reference to the 'tests' included in Policy E5 with reference to the social and economic benefits of the scheme, the suggested mitigation measures and additional planting to create habitats. However, for the reasons as stated above, and given the Council's housing land supply position these are insufficient to mitigate for the harm which is likely to result for the site's biodiversity.
91. For these reasons, given the limited survey information and the lack of basic details in respect of the suggestions regarding proposed mitigation and translocation of protected species I conclude that the proposed scheme conflicts with Policy E5 of the Local Plan and national guidance.

Character and appearance

92. The configuration of the site is highly constrained by surrounding development and the embanked railway to the north.
93. The proposed site layout includes a central spine road flanked on its eastern side by terraced and detached properties with 4 detached properties on its western side which ends with a 3 storey block of flats set within around 9m of the rail line. Areas of public open space would extend into the site from its southern edge on Walworth Road.
94. The Council cite the design of the blocks at No.10 Walworth Road as establishing a benchmark for the proposed flats (plots 20-31) on the appeal site. Even allowing for the context of this site being markedly different from that at No.10, the elevational treatment of the flats would be spare in its articulation and design. This is an important element in the whole scheme, dominating views from along the central spine road towards the northern end of the site. The shortcomings in the appearance of the block would be exacerbated by the limited areas of surrounding amenity land and large areas of parking resulting in it having a cramped appearance given its height.
95. However, the Council's concern regarding the appeal scheme failing to reflect the character of the development of existing sites along Walworth Road is misplaced. The appeal scheme would have an open aspect when viewed from the road given the amount of open space along the frontage. Other concerns regarding the depth of gardens are similarly overstated given their width.
96. Whilst the Council refer to the merits of the permission for residential development at No. 10 Walworth Road, the constraints on the appeal site are completely different and it is inappropriate to compare the two.
97. On this main issue, I conclude that the design of the appeal scheme largely reflects the site's constraints. However, the design of the proposed flats would detract from the overall character and appearance of the whole site and for this reason, I conclude is in conflict with Policy E1 of the Local Plan which requires new development to be high quality. The principles of this Policy are reflected in the revised Framework (2021) and the National Design Guidance cited by the Council.

Living conditions

98. There are a number of differences between the parties in respect of this main issue concerned with noise, the provision of private and public open space, parking and privacy in relation to policies of the RLP.

Noise

99. There are 4 potential sources of noise around the appeal site. These arise from the services on the rail line which lies above a steep embankment of around 4m height, traffic on Walworth Road and lawful industrial uses located at Holmstead to the west and in the commercial centre to the east. These uses are not fettered by conditions on working hours and the nature of activities which could be carried out in each of the premises.
100. Policy E8 recognises that particular uses are sensitive to noise pollution and that such uses should only be allowed if they would not be subject to unacceptable impacts arising from nearby uses having regard to mitigation measures. Supporting text to the policy advises that mitigation should be achieved through design, the use of acoustic barriers and internal layout of buildings but advises against some noise insulation measures which would compromise living conditions.
101. Given the location of the rail line on the embankment the potential for noise disturbance from this source is greater than at the site of Appeal A. However, the flatted block has been designed to ensure bedrooms would face into the site as a form of mitigation. Its location at the northern edge of the site could partially shield the remainder of the site from noise from this source.
102. The proposed layout indicates housing located on the southern edge of the site set further away from Walworth Road than the recently completed estates to the south along Walworth Road. Given their distance from the road, I do not consider that these properties would experience noise disturbance. Furthermore, the appeal site only partially shares a common boundary with Homestead and for that reason I do not consider that noise would seriously undermine the living conditions of occupiers of the appeal scheme.
103. However, it is the extent of potential noise generated by the industrial uses in the commercial centre which is at the heart of this issue. The appellant's noise report, identifies the levels of noise disturbance against various scenarios. I recognise that only under the 'worst case scenario' that there would be adverse impacts on living conditions of occupiers who would be outside in the rear gardens of their properties. The 'worst case' was derived from a set of realistic elements defined by the existing uses. In part with mitigation comprising acoustic fencing and double glazing, this could be addressed.
104. Although the components of the 'worst case scenario', could be replaced by more extreme sources of noise derived from a new set of occupiers in the future, I recognise that the approach taken by the appellant is realistic. For these reasons, I conclude that the proposed scheme would not be in conflict with Policy E8 of the RLP which seeks to protect future occupiers from noise pollution with mitigation controlled by conditions, were I to allow this appeal.

Private amenity space

105. Although the depth of gardens is limited for each of the proposed detached and terraced properties, I consider that the amount of private amenity space for these properties is sufficient.
106. In contrast the flats included in the block at the northern edge of the site would have no private amenity space. The juliette balconies are insufficient in this regard. The open space at the rear of the flats would be the subject of noise from the railway and the imposing height of the embankment is not conducive to recreation. The spaces at the front are limited in size and are surrounded by parking. These would not suffice as adequate private amenity space.
107. Whilst I conclude that the private amenity space for the individual houses is acceptable, the absence of similar space for the flats detracts from the scheme. For this reason, I conclude that the proposed scheme would be in conflict with Policy LHW4 of the RLP which seeks to protect future occupiers from noise pollution.

Public open space

108. Policy LHW1 requires the provision of 0.25ha of public open space across the site. I understand that an area of woodland at the frontage of the site could contribute to this figure despite the high density of trees.
109. During the Hearing, I heard representations that children's play space was required on site and the application of policy for allowing the delivery of replacement space off site funded through contributions would not be possible because of a lack of opportunities; a situation common in the local Ward.
110. The nearest children's play area to the appeal site is located on a new housing site further to the west of the appeal site. It would be about 5-10mins walk from the site via Walworth Road to Mulberry Road. Alternative sites in the new developments on the south side of Walworth Road would involve road crossing and then an approach up a steep hill through the estate.
111. Furthermore, the spaces located around the flatted block have a poor environment. Those areas to the front and rear of the block are restricted either by their location immediately below the rail embankment or limited in extent and configuration given their proximity to parking areas.
112. The lack of play space for young children would frustrate the normal enjoyment of this site impacting on the living conditions of future occupiers who require play facilities to allow adequate surveillance. Given the lack of open space around the site the commitment suggested in the Undertaking would not be sufficient to address the deficit. For these reasons, I conclude that the proposals conflict with Policy LHW1 of the RLP.

Parking areas

113. The Council's concerns relate to several plots which have parking spaces which require a short walk to access them. I do not regard the distances involved or the route required as likely to result in an infringement of the living conditions for occupiers of the proposed scheme.
114. Whilst this arrangement is not ideal, I do not consider that the extent of these discrepancies from Policy T2 of RLP as being material.

Conclusions on this main issue

115. The scheme includes a range of shortcomings in respect of public and private open space. Other matters could be addressed through planning condition such as noise mitigation. However, the proposed public and private space would be in conflict with Policies LHW1 and LHW4 of the RLP and would adversely impact on the living conditions of future occupiers.

Infrastructure

116. The appeal scheme was accompanied by a Unilateral Undertaking which includes financial contributions towards secondary education, and improvements to the village hall and contributions towards affordable housing. This would address the reasons 6, 7, and 8 of the Council's refusal. The Undertaking includes reference to how nitrate neutrality could be delivered and includes the outline of a secondary agreement related to the use of land at Roke Manor Farm.
117. The Council has submitted a Community Infrastructure Levy compliance schedule. This identifies how each of the suggested contributions is supported by adopted policy included in the RLP.
118. Overall, I am satisfied that the obligations included in the undertaking are related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme in line with paragraph 57 of the Framework.

Conclusions in respect of Appeal B

119. The entire site lies within the housing allocation included within Policy COM6 of the RLP. I recognise that the appellant has submitted different schemes for this site both as applications and seeking pre application advice in the recent past.
120. However, the shortcomings in this appeal scheme conflict with adopted policy. In particular, these relate to its adverse impacts on the area's character and appearance, the living conditions of future occupiers of the proposed flats and inadequate measures that would fail to either conserve or enhance protected species and habitats.
121. I regard the range of infrastructure included in the Undertaking as neutral as these measures are required for this development in line with adopted policies.
122. Accordingly, whilst I understand the appellants suggestion that the Council's robust 5 year housing land supply is not a reason in itself to warrant a dismissal there are sufficient grounds in this case, to substantiate my decision.
123. I have considered the appellants arguments that the proposed scheme would make a positive impact on the economic, environmental and social aspects of sustainable development as defined by the Framework in securing the Government's target of 300,000 houses annually. Whilst this is an important material consideration it is not outweighed by the policies of the RLP when read as a whole.
124. For the above reasons the appeal is dismissed.

Stephen Wilkinson,

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Tom Rumble MSc MRTPI	Woolf Bond Planning
Jason Mills Meng, MSc, PgDip, AMIODA	Senior Environmental Engineer Stuart Michaels, Associates
Gerald Guma BSc (Hons) MSc, C.WEM, MCIWEM,	Associate Director Odyssey Consultants
Adam Jessop MSc, ACIEEM,	Director Principal Ecologist, Ecosupport
Katherine Richards BSc, MSc MRTPI	Planner Foreman Homes

FOR THE LOCAL PLANNING AUTHORITY:

Miss Emma Jones BA (Hons) MSc	Senior Planning Officer
Katie Nethersole BSc (Hons)	Senior Planning Officer
Mrs Lorna Taylor BSc MSc Post Graduate Diploma in Acoustic and Noise CIEH MA	
Mr Thomas Crutchfield CMLI MA	Landscape Architect
Miss Jenny Aberly MEnv Sci ACIEEM	Ecologist
Mrs Mary Goodwin BSc MPhil Town Planning	Principal Planning Officer Delivery
Miss Katherine Dowle BA(Hons) MRTPI	Planning Officer Delivery
Stuart York Level 5 Diploma in Designing Out Crime	Designing Out Crime Hampshire Constabulary

INTERESTED PERSONS:

Simon Twigg
Baz Halwa