



Appeal Decision

Site visit made on 5 December 2017

by **Grahame Gould BA MPhil MRTPI**

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

Decision date: 29th December 2017

Appeal Ref: APP/A1720/W/17/3182716

Land South and East of Rookery Avenue, Swanwick

- 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 Foreman Homes Limited against the decision of Fareham Borough Council.
 - The application Ref P/16/1088/OA, dated 16 September 2016, was refused by notice dated 23 February 2017.
 - The development proposed is described as 'residential development at a density of up to 15 dwellings per hectare, associated landscaping, amenity areas and a means of access from Rookery Avenue'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline form, with access being for approval and appearance, landscaping, layout and scale being reserved for future consideration. The description of development used on the application form refers to a residential development being undertaken at a density of up to 15 dwellings per hectare (dph). The number of dwellings within the development is quantified at twenty two on the application form, a net increase of twenty one dwellings, with 112 Botley Road (No 112) being demolished as part of the scheme.
3. The application as originally submitted had a 'red line' area of 1.48 hectares, spread over two plots, respectively the eastern and western plots. The western plot comprises a bungalow and its grounds at No 112. The eastern plot is wooded. The application was amended prior to its determination, with the eastern plot's red line area being reduced and the excluded area is shown as 'blue land'. Part of the blue land being set aside to accommodate the possible extension of Rookery Avenue. The remainder of the blue land forming the western extremity of the locally designated Gull Coppice site of importance for nature conservation (SINC).
4. The reduction in the site's developable area has implications for the accuracy of the reference to the development being undertaken at a density of up to 15 dph and I have therefore not referred to that figure in my reasoning below. However, as the appellant has made many references to the development being for up to 22 dwellings I have treated that number as being the development's upper ceiling.

5. The application was accompanied by an indicative layout plan and in association with the appeal an alternative layout plan (drawing 16.070.02 revision G) has been submitted. That plan shows a single block occupying part of the eastern plot as opposed to a number of detached houses as originally envisaged and I have had regard to the application and appeal plans.
6. The appellant has submitted an executed Unilateral Undertaking (UU), made pursuant to Section 106 of the Act. The UU, which is binding on the landowners (and their successors in title) and the appellant, would secure: the provision of nine affordable homes; a contribution of £5,000.00 for funding amendments to the traffic regulation order applying to Rookery Avenue; the undertaking of off-site highway works; and the safeguarding of land for the possible extension of Rookery Avenue by the highway authority.
7. The planning obligations relating to highway matters and the provision of affordable housing respond to the sixth to eighth reasons for refusal. The Council has submitted that in event of the appellant entering into planning obligations relating to the sixth to eighth reasons for refusal, then it would consider those reasons for refusal to have been 'satisfactorily addressed'. As the UU addresses the matters relating to the sixth to eighth reasons for refusal I have treated those matters as not being in dispute and I consider it unnecessary to comment on them in my reasoning below.

Main Issues

8. The main issues are the development's effect on:
 - the character and appearance of the area, including the trees on adjoining land that are subject to a tree preservation order (TPO);
 - the Solent Coastal Special Protection Area (the SPA);
 - protected species; and
 - the living conditions for the occupiers of the development, with particular regard to privacy and overbearing.

Reasons

Character and Appearance

9. The eastern plot is heavily wooded and the construction of either a group of houses or a single block, as per either the indicative layout plans submitted with the application or the appeal, would be likely to involve significant tree loss. While arboricultural reports have been provided, because the layout for the development is a reserved matter, I consider that the submitted application has not clearly demonstrated which trees in the eastern plot would be retained or removed.
10. The woodland that characterises the part of the eastern plot within the red line area is not discernible from the woodland in the remainder of the eastern plot. On the evidence available to me I consider it likely that the tree removal associated with the development would significantly erode the sylvan character of the eastern plot, harming the area's character and appearance. In this regard I consider reserving the development's layout for future consideration is inappropriate for a site with so much existing tree cover.

11. I recognise that in the event of the Rookery Avenue being extended, as envisaged under Policy DSP50 of the Fareham Local Plan Part 2: Development Sites and Policies of 2015 (the Local Plan), significant tree loss would be likely. However, I consider that the implementation of the road scheme would be likely to have a different effect on the woodland, in that the road could be provided with trees on either side of it. The provision of dwellings in the southern portion of the eastern plot, in combination with a new road, would greatly reduce this plot's wooded character. I therefore have concerns as to whether there would be sufficient room to accommodate meaningful replacement tree planting to mitigate the effects of both a housing development and the new road.
12. The application site lies beyond the settlement boundaries for Swanick and Whiteley to the north of the M27 and the substantial built up area to the south of the motorway. For the purposes of Policy CS14 of the Fareham Core Strategy of 2011 (the Core Strategy) and Policy DSP6 of the Local Plan the site is within the countryside. The site is therefore in an area of development restraint where the purpose is to protect the countryside's landscape character, appearance and function. Under Policy CS14 only development that is necessary for agriculture, forestry, horticulture or infrastructure provision is to be considered as being acceptable. For the purposes of Policy DSP6 there is a presumption against development outside urban settlement boundaries and development will only be permissible when it, amongst other things, requires a countryside location or it would involve a conversion scheme or modest infilling.
13. The development would not come within the exceptions stated in Policies CS14 and DSP6. However, while this site lies outside a settlement boundary, it is comparatively modest in scale compared with the housing area of fairly recent construction to the north Rookery Avenue. The site provides some relief to the built development in the area, however, that said I do not consider it has the character or appearance of being open countryside in the widely accepted sense, being a comparatively narrow wedge between a built up area and the M27. I also consider that this site is incapable of being viewed as being necessary to avoid the coalescence of the built up areas to the north and south of the motorway because the M27 acts as a clear physical barrier.
14. I am therefore not persuaded that this development would harm the landscape character, appearance or functioning of the countryside. I therefore consider that there would be no unacceptable conflict with development plan Policies CS14 and DSP6.
15. To the west of the western plot there is an area of woodland which is subject to a TPO. The access to No 112 and thus the development immediately adjoins the northern boundary of the TPO'd woodland. There is concern that the works associated with improving the access so that it could serve the development could encroach into the root protection areas for some of the TPO'd trees. The appellant has submitted that to safeguard the wellbeing of the protected trees the necessary widening of the access could be undertaken using recognised no dig techniques, in accordance with the highway authority's published guidance. In this regard as part of the appellant's appeal case it has been submitted that the effect on the TPO'd trees would be

less significant than originally thought because the width of the existing access has been resurveyed and found to be a little wider.

16. As the highway authority has not confirmed that the access could be constructed to accord with its standards, the Council contends it has not been demonstrated that the TPO'd trees would be unharmed. As part of the appeal the Council has had the opportunity to seek the highway authority's advice on the suitability of the appellant's no dig construction methodology. However, there is no evidence of the Council having sought the highway authority's advice and I consider that the Council's evidence has not demonstrated that the development would harm the TPO'd trees.
17. On the evidence available to me I conclude that a development of up to 22 dwellings would unacceptably harm the character and appearance of the area, given the effect on the trees in the eastern plot. The development would therefore be contrary to Policy CS17 of the Core Strategy because it has not been demonstrated that it would respond positively to the trees that characterise the area and that the replacement tree planting would adequately mitigate the tree loss. I also consider there would be conflict with paragraphs 17 (the fourth core planning principle), 56, 58, 61 and 64 of the National Planning Policy Framework (the Framework) because it has not been demonstrated that this development would respond to and integrate with the area's character and appearance and thus represent good design.

Solent SPA

18. The appellant recognises that the site is within the zone of influence for the SPA and that there is a need to discourage the SPA's use as a recreational destination by the development's occupiers. The Council operates a disturbance avoidance strategy to mitigate the effects of new development on the integrity of the SPA, with that strategy being underpinned by Policy CS4 of the Core Strategy and Policy DSP15 of the Local Plan. The avoidance strategy operates on the basis of financial contributions being paid by developers to secure the strategy's implementation.
19. The third schedule of the counterpart UUs refer to a 'Solent Disturbance Mitigation Project Contribution' (the SPA contribution) and states that the development should not be commenced until that contribution has been paid to the Council. However, nowhere in the third schedule or any other part of the UU is the SPA contribution quantified. Given the statutory duty to safeguard the habitat in the SPA I am content that mitigation would be necessary. In the absence of a complete planning obligation the mitigation required to safeguard the SPA's integrity would be unavailable. As there would be no mechanism to mitigate the development's effects on the SPA I can only conclude that the development would unacceptably harm the SPA. The absence of a complete planning obligation gives rise to conflict with Policy CS4 of the Core Strategy, Policy DSP15 of the Local Plan and paragraphs 109 and 118 of the Framework.
20. In the absence of suitable mitigation for the development's effects on the SPA, I consider the requirements of The Conservation of Habitats and Species Regulations 2017¹ cannot be discharged. That is because insufficient

¹ Regulations that came into force on 30 November 2017, consolidating the 2010 Regulations and the subsequent amending statutory instruments

information is available to me to undertake a Habitats Regulation assessment for the unmitigated effect of this development, in combination with others, on the SPA.

Protected Species

21. The site supports four reptile species, Slow Worm, Grass Snake, Adder and Common Lizard, as well as Dormice. Reptiles inhabiting the site would need to be translocated. However, the appellant's evidence concerning reptiles, while quantifying the population sizes for each of the species found on the site, has not confirmed that the preferred off-site translocation site² would have the capacity to accommodate the number of animals to be translocated to it. The appellant's case also provides no confirmation of there being an agreement with the owner of the translocation site to secure its use. I am therefore not persuaded that there is sufficient evidence before me to enable me to conclude that the translocation of reptiles could be addressed by the imposition of a reasonable and enforceable condition.
22. With respect to Dormice surveys have revealed that the site supports a 'district value' population. The site's development would result in around 5,000 square metres of suitable Dormouse habitat being lost³. To mitigate the loss Dormouse habitat it is intended that 4,000 square metres of new planting would be undertaken. While the habitat loss would in part be mitigated by the new planting being of a greater species diversity, I consider that the 1,000 square metre habitat loss for Dormice would be significant, in relative terms. I am also concerned that some of the new planting relied upon as Dormouse habitat could be located within private garden areas, which could undermine its availability in perpetuity. I therefore consider that insufficient information relating to the development's effects on Dormice is available to enable reliance to be placed on a planning condition to safeguard the needs of Dormice.
23. The site has the potential to provide some habitat for roosting or commuting/foraging bats. The appellant's Bat surveys demonstrate lower levels of commuting and foraging activity than might be expected and it is suggested that could be because of the site's exposure to M27 road traffic noise. The appellant contends that an appropriate mitigation response for the effect on Bats would be the undertaking of new and replacement planting. The available evidence suggests that limited use of the site is made by Bats and I consider that it would be possible to impose a condition securing an appropriate level of mitigation for the development's effects on Bats.
24. For the reasons given above I conclude that it has not been demonstrated that the development could proceed without there being harm to protected species. The development would therefore be contrary to Policy DSP13 of the Local Plan and paragraph 118 of the Framework because it has not been demonstrated that populations of protected species would be safeguarded or that the biodiversity of the area would be conserved.

Living conditions for occupiers of the development

25. The indicative layout for the dwellings within the western plot suggests the development on this part of the site would be quite intense. However, I

² The Hoo with Warwash Nature Reserve

³ The Dormouse Mitigation Strategy report of February 2017 prepared by Ecosupport

consider it likely that the separation distances between individual dwellings would be sufficient for the development's occupiers not to experience any unacceptable overlooking or overbearing effects. The safeguarding of the living conditions of the occupiers of the development is an issue that would in any event be for consideration at the reserved matters stage, with layout and scale having been reserved for future consideration.

26. On this issue I therefore conclude that the development could be designed so as to avoid harm to the living conditions of its occupiers. In this regard I therefore consider that there would be no conflict with Policy CS17 of the Core Strategy.

Other Matters

27. There is agreement that the Council cannot currently demonstrate the availability of a five year supply of deliverable housing land sites (an HLS). The provision of up to 22 dwellings would make a useful contribution to the HLS. Notwithstanding the Council's submissions on this matter I consider that there can be little doubt that a development of this scale would come forward within five years and would therefore contribute to the HLS. The development in providing housing would generate some social and economic benefits. The assistance with the HLS gains some support from the Framework's policies that seek to boost the supply of housing. I also consider that in accessibility terms the occupiers of the development would have good access to everyday services and facilities and public transport. Those are matters that all weigh in favour of the development.
28. It is contended that because of the absence of an HLS that the tilted balance in favour of sustainable development stated in paragraph 14 of the Framework should be applied. Paragraph 14 states:

'At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development ... For decision making this means: ...

- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted.'*

The Framework's ninth footnote gives examples of its policies that indicate development should be restricted. Amongst other things the Framework's policies relating to the Birds and Habitats Directives are listed in the ninth footnote.

29. I have found that in the absence of there being mitigation for the development's effects on the integrity of the SPA there would be unacceptable harm to the SPA. That harm gives rise to conflict with policies of the Framework which indicate that development should be restricted. Accordingly I consider that paragraph 14's tilted balance is not engaged, with this being a case that comes within the second sub-bullet point's scope.

30. The inadequate mitigation for the development's effects on the SPA, together with the harm to the character and appearance of the area and protected species that I have identified, give rise to conflict with both national and local planning policy. I consider that the development's significant harm outweighs its benefits and that it cannot be viewed as being sustainable.

Conclusions

31. While the development would provide acceptable living conditions for its occupiers, I have found, on the available evidence, that there would be harm to the character and appearance of the area, the integrity of the SPA and the wellbeing of protected species. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR