



Appeal Decision

Hearing held on 3 September 2019

Site visit made on 3 September 2019

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/A1720/W/18/3209865

Rear of 77 Burrige Road, Burrige, Southampton SO31 1BY

- 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 Mrs Anita Barney against the decision of Fareham Borough Council.
 - The application Ref P/17/1514/FP, dated 18 December 2017, was refused by notice dated 22 February 2018.
 - The development proposed is erection of a single dwellinghouse.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has provided a signed unilateral undertaking which secures a financial contribution in line with the Solent Recreation Mitigation Strategy. With the agreement of the appellant, additional time was allowed after the hearing for the receipt of an air quality report which the Council has commissioned in relation to the effects of new development on the Solent Special Protection Areas (SPAs). That report has not materialised and therefore I have proceeded to determine the appeal. I shall return to the SPA issues separately, once I have dealt with the main issues in dispute.

Main Issues

3. The main issues are:
 - a) whether the proposal would comply with development plan policy on the location of new housing;
 - b) the effect of the proposed development on the character and appearance of the area;
 - c) the effect on biodiversity, having regard to the designation of the site as part of a Site of Importance for Nature Conservation; and
 - d) whether, having regard to national planning policy and the housing land supply of the Council, there are material considerations sufficient to outweigh any conflict with the development plan in respect of the above issues.

Reasons

Development plan policy on the location of new housing

4. The site lies in the countryside for policy purposes, outside of the Borough's defined settlements. Policy CS14 of the Fareham Core Strategy (2011) (CS) seeks to strictly control built development in such locations to protect the countryside from development which would adversely affect its landscape character, appearance and function. Policy DSP6 of the Local Plan Part 2: Development Sites and Policies (2015) (LPP2) sets a presumption against new residential development outside of the defined urban settlement boundaries.
5. The proposal does not fall within any of the categories of development which are listed as being permissible outside of settlement boundaries. It was confirmed at the hearing that the scheme is not being promoted as infill development under LPP2 Policy DSP6. Given that this policy precludes the siting of dwellings at the rear of existing dwellings, the scheme cannot comprise infill.
6. The Council concedes that it is unable to demonstrate a 5 year supply of land for housing. In such circumstances, LPP2 Policy DSP40 states that additional housing sites, outside of the urban area boundary, may be permitted where they meet specified criteria. Criterion (ii) stipulates that sites should be sustainably located adjacent to, and well related to, the existing settlement boundaries, and well-integrated with the neighbouring settlement. The nearest settlement boundary is that of Whiteley, approximately 667 m away. Since the site is not adjacent to that settlement boundary, it follows that there must be conflict with Policy DSP40.
7. Consequently, the starting point for my assessment is that the proposal is contrary to development plan policy on the location of new housing. For the scheme to be acceptable, the policy conflict must be outweighed by other material considerations.

Character and appearance

8. Burr ridge Road is characterised by a close knit ribbon of housing on both sides. The grain of development is predominantly single plot depth, with dwellings backing onto countryside. The appellant drew my attention to various buildings to the rear of the street frontage. These are visible on maps and aerial photos, but for the most part they are not seen from the road. A dense tree screen precludes any views from the appeal site itself. The available evidence does not enable me to determine the precise scale of the buildings or their use; it is unclear in most cases whether they are dwellings or large outbuildings. Either way, these developments do not define the prevailing character.
9. The appeal site lies towards the western end of Burr ridge Road, just beyond where the road narrows. The continuous frontage of development, which once finished at 75 Burr ridge Road, has been extended by the gypsy pitch with its caravan and day room. A field then forms a gap to 91 Burr ridge Road, a large detached property with a substantial wall on the south-east boundary with the field. To the rear of No 91 there is a sizeable garage which has the outward appearance of a dwelling. The locality contains a loose scattering of other houses, including one immediately to the rear of the appeal site and a detached property set some 200 m back from the north side of Burr ridge Road.

10. The Inspector who granted permission for the gypsy pitch¹ took the view that the site did not lie in 'open' countryside on the basis that there was residential development immediately adjacent to it on three sides and the grounds of a fourth property opposite. This opinion was expressed in the context of an assessment of whether that proposal would comply with government policy on traveller sites, and not in relation to character and appearance impacts. Nevertheless, I concur with the analysis.
11. The nature of surrounding development is such that I do not consider that the proposal would have a material adverse impact on the landscape character, appearance and function of the countryside. However, the scheme would introduce a tandem form of development which is discordant with the existing pattern of housing in Burridge Road. Although screened by hedging along the road frontage, the substantial two-storey dwelling would be visible behind the caravan and day room in views along the driveway, and from public vantage points in the vicinity of No 91. The adverse impacts could be mitigated in part by landscaping the site, but the backland siting of the proposed dwelling would be incongruous and there would be material harm to the character of the area.
12. I therefore find conflict with CS Policy CS17 and LPP2 Policy DSP40 insofar as they seek development which is respectful of the key characteristics of the area and sensitively designed to reflect the character of the neighbouring settlement.

Ecology

13. The site forms part of a larger area which was designated in 2013 as a Site of Importance for Nature Conservation (SINC). This land was originally a single parcel, but it has since been sub-divided into two smaller fields, of which only the south-eastern one is in the appellant's legal ownership. A private gypsy pitch has been granted permission in the north-eastern corner, and this area has been taken out of the SINC.
14. The SINC was identified as having ecological interest due to its semi-improved rush-pasture. The Hampshire Biodiversity Information Centre endeavours to monitor the condition of SINCs, with re-surveys taking place every 5 years. The most recent survey was carried out in September 2017. The appellant has also commissioned assessments which included surveys in June 2018² and July 2019³ by different ecologists.
15. The findings of these reports are not entirely consistent with one another. Survey accuracy can vary according to the surveyor and site conditions – which can be affected by factors such as the management of the land at the time of the visit and whether it was preceded by a particularly wet or dry period. Notwithstanding the variations in survey results, the parties were agreed that the appeal site is semi-improved grassland. There was a general acceptance that the diversity of species and structure is not as great as in the north-western field. There is evidence to suggest that the ground has been levelled and the presence of Perennial Rye Grass and White Clover indicates improvement. Despite this, I agree with the Council that it would not be a difficult exercise to restore the ecological value of the land

¹ APP/A1720/A/13/2191454, APP/A1720/A/13/2186874

² Vegetation Survey Report, Biocensus, August 2018

³ Ecological Planning and Research, 5th August 2019

16. The appellant contends that the current regular management by grazing and/or mowing is not conducive to maintaining or enhancing the biodiversity value of the site. It was argued that the Council has no effective powers to prevent damage to this local non-statutory designation. Therefore, to prevent a decline in the condition of the grassland and to compensate for the loss of semi-improved grassland, the appellant proposes that the remainder of the south-east field should be the subject of a Biodiversity Management and Enhancement Strategy (BMES). This could be secured by condition under any permission.
17. The BMES would apply to a small part of the SINC overall. In my judgement, the pro-active management of this modest parcel of land would neither compensate for the loss of semi-improved grassland nor provide a net gain in biodiversity. Had the BMES also applied to the north-western field then I would have given it greater weight. However, I heard that this field was not within the appellant's ownership and therefore a condition controlling its management would not be reasonable or enforceable.
18. CS Policy CS4 seeks to protect habitats important to the Borough in accordance with a hierarchy of nature conservation designations. LPP2 Policy DSP13 seeks to protect and enhance designated sites and sites of nature conservation value. The latter policy stipulates that proposals resulting in detrimental impacts will only be granted where the impacts are outweighed by the need for, and the benefits of, the development; and adverse impacts can be minimised and provision is made for mitigation and, where necessary, compensation for those impacts is provided.
19. Both policies are broadly consistent with paragraphs 174 and 175 of the Framework. Notwithstanding the arguments in relation to the Council's ability to control how the land is managed, and the offer of mitigation in the form of a BMES, there would be irreversible loss of semi-mature grassland and therefore harm to the SINC designation. There would be conflict with the development plan and the Framework as a result.

Other material considerations

20. It is common ground that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. The authority's latest housing position statement, which was prepared using the standard method set out in national planning guidance, concludes that there is a 4.66 year supply of housing. However, this figure is challenged, with the appellant contending that the actual supply is 2 years or below.
21. The Council has included within its supply figures a significant number of dwellings where there is a resolution to grant planning permission. Most relate to outline permissions and the majority are awaiting the signing of legal agreements. Also included in the Council's figures are various adopted Local Plan allocations which do not yet have planning permission. A further tranche of dwellings is relied upon from the Welbourne Local Plan allocation; I was told that an outline application is due to be reported to committee soon. Two brownfield sites have been identified, but neither has permission; one has a live planning application and the other was the subject of a request for an EIA screening opinion.

22. The Framework⁴ states that to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years. Where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is *clear evidence* [my emphasis] that housing completions will begin on site within 5 years. The Planning Practice Guidance provides examples of the type of evidence that will be required⁵.
23. The Council indicated that it was satisfied that the sites listed within its supply calculation would deliver within 5 years. However, it has not provided the clear evidence sought by the Framework in relation to at least 1700 dwellings. The information before me does not enable me to reach a definitive figure for the current housing land supply position, but the probability is that it is significantly below that published by the Council, and much closer to that advanced by the appellant. This represents an acute shortfall of housing which needs to be factored into the planning balance.
24. Although the site lies outside of the settlement boundary, it is well related to shops, schools and health facilities. There are bus stops within 600 m walk, from which a limited number of services (some akin to community transport) operate, including one to Barton Peveril Sixth Form College. The bus service referred to by the previous Inspector, which operated at less than 2 hour intervals, no longer exists. However, it will be possible in the relatively near future to access primary schools and the local centres within a new urban extension which is presently under construction on the northern edge of Whiteley. This journey will be somewhere in the region of 1.5 km by using Whiteley Lane.
25. Looking at the matter in the round, I do not share the Council's view that the proposal would create an isolated home in the countryside. The site is directly adjacent to the built-up area of Burr ridge and accessibility to services and facilities would not be significantly different to that of existing suburban estate housing within Whiteley itself. Future occupiers of the development would not have to rely upon the private car, but any car journeys undertaken would be short. Accordingly, there is no conflict with paragraph 79 of the Framework.

Effect on Solent Special Protection Areas

26. The appellant has provided a signed unilateral undertaking which secures a financial contribution to mitigate the additional recreational impacts on the Solent SPAs, in line with the Solent Recreation Mitigation Strategy. The Council is satisfied that the monies are secure and that they would achieve their intended purpose, and I have no reason to take a different view.
27. At the hearing, the Council expressed concerns regarding the implications of the proposal for water and air quality, and the consequential effects on the integrity of the SPAs. These matters had not been raised in the written evidence. A recent report to the Council's Executive explains the background to the nitrates issue and sets out potential alternative approaches to mitigation. Placed in the context of the appeal scheme, these would require a developer contribution and

⁴ NPPF Annex 2 definition of 'Deliverable'

⁵ Paragraph 036 Reference ID: 3-036-2010913

- it is the Council's intention to use a Grampian condition to secure a mitigation package, which could be extended to include the air quality issue if necessary.
28. The Planning Practice Guidance would permit the use of negatively worded conditions in exceptional circumstances, where the delivery of the development would otherwise be at serious risk. Exceptional circumstances could potentially apply to Fareham, given that I was told that the local planning authority has a backlog of planning applications for residential development which cannot be determined, and which are pending resolution of the issue.
29. However, it seems to me that the Council's suggested approach is fraught with difficulty. The suggested mitigation measures require further discussions with third parties, and none have yet been costed. This means that the level of the developer contribution cannot be set, and therefore it could be argued that the proposed Grampian condition would lack precision as it would be akin to a blank cheque. Furthermore, an air quality report commissioned by the Council is still awaited so it cannot be ascertained whether, as a matter of principle, housing development would result in likely significant effects through this pathway and whether mitigation is required. I have no idea what that mitigation would involve.
30. Natural England has been involved in early discussions, but I do not have the formal views of this statutory consultee. Were I to be minded to allow the appeal then I would need to undertake consultation as part of an appropriate assessment under the Conservation of Habitats and Species Regulations 2017. The appellant would need to be given the opportunity to respond. As it stands, and applying the precautionary principle, I cannot rule out likely significant effects on the integrity of the Solent SPAs and there is no certainty over the effectiveness of the mitigation measures identified.

Planning Balance

31. It is common ground that the tilted balance within paragraph 11 of the Framework should be engaged. This states that where the policies which are most important for determining the application are out-of-date, permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
32. By virtue of footnote 7 of the Framework, the failure of the Council to demonstrate the requisite housing land supply renders out-of-date those policies which influence the location and distribution of new housing. This includes CS Policies CS2, CS6 and CS14, LPP2 Policies DSP6 and DSP40 and the settlement boundaries upon which these policies rely. I have therefore attached limited weight to the conflict with development plan policy regarding housing in the countryside.
33. However, the proposal would cause material harm to the character and appearance of the area and biodiversity. Although the appellant sought to downplay the scale of the harm, I do not share the view that the harm would be limited simply because the proposal relates to a single dwelling. I have taken account of the site's accessibility to services and facilities but consider that the adverse impacts would significantly and demonstrably outweigh the very modest contribution the proposal would make towards rectifying the housing

land supply deficit. This would have been my overall conclusion, even in the scenario that the issue with the Solent SPAs could be resolved satisfactorily.

Conclusion

34. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Anita Barney	Appellant
Reuben Barney	Appellant's husband
Matthew Green	Director, Green Planning Studio Ltd
Lynsey Robinson BSc MSc PhD CEnv MCIEEM	Senior Consultant Ecologist, Ecological Planning & Research Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Peter Kneen BSc (Hons) MSc MRTPI	Principal Planning Officer, Fareham Borough Council
Maral Miri	Ecologist, Hampshire County Council
Nicky Court	Manager, Hampshire Biodiversity Information Centre

Documents submitted at the hearing

1. Signed Statement of Common Ground
2. Report to the Executive for Decision 02 September 2019

Submitted electronically after the hearing

3. Email from Council dated 6 September 2019 (@10:18) enclosing:
 - SINC Location Plan
 - North Whitely – Illustrative Master Plan
 - Part 2 Local Plan – Inset 1 (Burrige and Whiteley)
 - Solent Recreation Mitigation Strategy (December 2017)
 - Link to masterplan on Taylor Wimpey website
4. Email from appellant dated 3 October 2019 (@15:48) with annotated Google Earth attachments
5. Email from Council dated 4 October 2019 (@11:30) with draft Grampian condition to deal with nitrates and air quality
6. Email from appellant dated 25 October 2019 (@11:55) with s106 extracts
7. Email from Council dated 29 October 2019 (@13:34)