

OFFICER REPORT FOR COMMITTEE

DATE: 02/03/2022

**P/21/1903/FP
MR I WILLIAMSON**

**WARD: PORTCHESTER EAST
AGENT: MR S ANDREWS**

CONSTRUCTION OF TWO DETACHED, TWO BEDROOM DWELLINGS WITH ASSOCIATED BIN, CYCLE STORE, PARKING AND ACCESS

LAND TO REAR OF 52 CASTLE STREET, PORTCHESTER, FAREHAM, PO15 9PU

Report By

Katherine Alger- Direct Dial: 01329 824666

1.0 *Introduction*

1.1 This application is reported to the Planning Committee due to the number of third-party representations that have been received.

2.0 *Site Description*

2.1 This application relates to a plot of land to the rear of 52 Castle Street, and that wraps around to the north behind the rear gardens of 44a, 46, 48 and 50 Castle Street. The site is accessed by a long driveway to the south of the host dwelling. The surrounding area is residential in character with semi-detached and detached properties to the west on Castle Street and detached dwellings within The Keep to the east of the application site. The properties in The Keep have only short rear gardens, measuring between 12 metres and 8 metres in length

2.2 The application site, like much of Castle Street is located within the Environment Agency's designated Flood Zones 2 and 3, where new residential development should only be considered acceptable where it passes the Sequential Test and Exceptions Test as set out in the National Planning Policy Framework.

3.0 *Description of Proposal*

3.1 The proposal is for the construction of two detached two-bedroom dwellings with associated bin, cycle store, parking and access.

3.2 As the dwellings would be located within Flood Zones 2 and 3 the living accommodation would be located on the first floor with a utility room, cycle store, garden store and WC on the ground floor.

4.0 Policies

4.1 The following policies apply to this application:

Adopted Fareham Borough Core Strategy

CS2: Housing Provision

CS4: Green Infrastructure, Biodiversity and Geological Conservation

CS5: Transport Strategy and Infrastructure

CS6: The Development Strategy

CS15: Sustainable Development and Climate Change

CS17: High Quality Design

Adopted Development Sites and Policies

DSP1: Sustainable Development

DSP2: Environmental Impact

DSP3: Impact on Living Conditions

DSP13: Nature Conservation

DSP15: Recreational Disturbance on the Solent Special Protection Areas

DSP40: Housing Allocations

Emerging Fareham Local Plan 2037

H1: Housing Provision

CC2: Managing Flood Risk and Sustainable Drainage Systems

NE1: Protection of Nature Conservation, Biodiversity and the Local Ecological Network

NE2: Biodiversity Net Gain

NE3: Recreational Disturbance on the Solent Special Protection Areas (SPAs)

D1: High Quality Design and Place Making

D2: Ensuring Good Environmental Conditions

Other Documents:

Fareham Borough Design Guidance: Supplementary Planning Document (excluding Welborne) December 2015

Residential Car Parking Standards 2009

5.0 Relevant Planning History

5.1 In 2019 a planning application was withdrawn for the construction of five dwellings with parking following the demolition of the existing dwelling (Ref P/18/1013/FP).

5.2 In 2020 an application was withdrawn for the construction of No 2 two bedroom flats (both at first floor) over car parking, bicycle stores and service road parking to rear of no 52 (Ref P/20/0725/FP).

6.0 Representations

6.1 A total of five representations (4 in objection and 1 in support) have been received these are summarised below:

Objections

- Increased sense of enclosure
- Loss of light
- Loss of privacy
- Maintenance of hedging
- Materials not in-keeping
- Proposed trees inappropriate for area

Support

- Improve security of area
- Maintain site and prevent it from becoming overgrown

7.0 Consultations

EXTERNAL

Highways Hampshire County Council

7.1 No objection.

Natural England

7.2 Objection- further information required to determine impact on protected sites

Archaeology

7.3 No Objection

Environment Agency

No objection subject to development being carried out in accordance with submitted Flood Risk Assessment.

INTERNAL

Ecology

7.5 Concerns regarding close of badger sett, the proposal has breached the Badgers Act 1992. No details regarding Biodiversity Net Gain have been provided.

Trees

7.6 No objection.

Contaminated Land

7.7 No Objection subject to conditions

8.0 Planning Considerations

8.1 The following matters represent the key material planning considerations which need to be assessed to determine the suitability of the development proposal. The key issues comprise:

- a) Principle of development
- b) Design/Impact on character and appearance of surrounding area
- c) Impact on residential amenity
- d) Highways
- e) Ecology
- f) Trees
- g) Flooding
- h) Impact on Protected Sites
- i) Other issues raised in objections
- j) Conclusion

a) Principle of development

8.2 Policy CS2 (Housing Provision) and CS6 (The Development Strategy) of the adopted Fareham Borough Core Strategy place priority on re-using previously developed land within the defined urban settlement boundaries to provide housing. The National Planning Policy Framework (NPPF) excludes private residential gardens from being defined as previously developed land but set out there should be a strong presumption in favour of sustainable development. It is recognised that garden sites can assist in meeting housing needs provided that the proposed development is acceptable in all other respects. The site is located within the defined settlement boundary of Portchester, such that the principle of development of the land is acceptable subject to all other material considerations.

b) Design/Impact on character and appearance of surrounding area

8.3 Policy CS17 of the Core Strategy states that all development will be designed to respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form and spaciousness and use of external materials.

8.4 The properties in Castle Street benefit from long rear gardens, whilst the properties in The Keep have smaller rear gardens. The introduction of backland development in this location would be a new feature along this immediate part of Castle Street, however, there is a varied character of properties and plot sizes within the surrounding area in this relatively dense

urban environment, close to local services and facilities. Therefore, the proposed design and plot sizes are considered to be acceptable.

- 8.5 The dwellings would both achieve garden depths of at least 11m which would be compliant with the Design Guidance SPD.
- 8.6 The dwellings would be designed to reflect the character of the two-storey dwellings in the vicinity of the site. Therefore, it is considered that the design of the dwellings would be acceptable and would have regard to the key characteristics of the surrounding area.
- 8.7 The proposal would therefore be in accordance with Policy CS17.

c) Impact on Residential Amenity

- 8.8 Plot One would have an 11 metre deep garden. The property to the rear at 26 The Keep has a garden depth of approximately 11m giving a back-to-back separation distance of 22 metres between the application site and the rear elevation of 26 The Keep. The Design Guidance states that first floor windows should be at least 11 metres from boundaries they look towards and no less than 22 metres from facing windows in neighbouring houses.
- 8.9 Plot One would have one window on the rear elevation which would be obscure glazed as it would serve a bathroom. Bedroom 1 would have two side windows. However, as these windows are located on the side any views to the rear elevation of 26 The Keep would be oblique. Therefore, it is not considered that the proposal would result in an unacceptable adverse impact on the living conditions of the occupiers of 26 The Keep.
- 8.10 The dwelling at 24 The Keep would face directly onto Plot Two. The property at 24 The Keep has a garden depth of 10m and there would be a 3m separation distance between the side elevation of Plot Two and the rear boundary. The Design Guidance states that where a new dwelling would affect a sole window in a neighbouring property serving a habitable room at ground floor level, a distance of 6 metres between the neighbouring property's window and the flank of the new dwelling should be achieved. There would be a 13-metre separation distance and therefore, it is considered that the proposal would comply with the Guidance.
- 8.11 However, the proposed dwelling for Plot Two measures 10.75 metres, compared to 10.4 metres for the width of the plot at 24 The Keep. Whilst the proposal would be set 13 metres from the rear elevation, it would only be set 3 metres off the mutual boundary and would occupy the entire width of the rear garden. As a full two storey structure, this would result in a significant impact on the outlook, as a result of bulk and massing from the garden of 24 The

Keep and would substantially reduce afternoon and evening light into the garden area. The only window facing onto 24 The Keep would serve the landing and a condition could be imposed to ensure that this window is obscure glazed. Therefore, despite no issue with overlooking, it is considered that the proposal would result in a significantly adverse impact on the living conditions of 24 The Keep through an overbearing and oppressive structure on their western boundary, impacting on both outlook and levels of sunlight from entering the relatively small rear garden. The proposals would therefore fail to accord with Policy DSP3 of the adopted Local Plan.

- 8.12 There would be a separation distance of at least 22 metres between the dwelling on Plot One and the property to the west at 52 Castle Street. Therefore, it is not considered that the proposal would result in an unacceptable adverse effect on the living conditions of the host dwelling at 52 Castle Street.
- 8.13 The development proposal is therefore considered to partially accord with the requirements of the Design Guidance, but due to the height and massing of Plot Two would result in an unacceptable adverse impact on the living conditions of neighbouring occupiers, contrary to the advice of Policy DSP3.

d) Highways/Parking

- 8.14 The Residential Car Parking Standards Supplementary Planning Document requires at least 2 car parking spaces for a dwelling with 2 bedrooms. The submitted plans shows eight car parking spaces therefore there would be sufficient parking for each dwelling.
- 8.15 The Highways Authority has considered the application and raises no objection to the proposal in terms of impact on the public highway at Castle Street.

e) Ecology

- 8.16 The Council's Ecologist has considered the application and has raised concerns regarding the clearance of the Badger sett within the northern end of the rear garden, behind 20 and 22 The Keep. The submitted Design and Access Statement states that '*The application site is currently made up of a vacant piece of brownfield land, that has been cleared with no ecological discernible use or value*'. In 2018, the site was subject to a withdrawn application (application reference P/18/1013/FP) which was supported by an ecology report by Ecosupport. This report had confirmed that an active outlier badger sett was present on site. Furthermore, the site was assessed to have low potential for reptiles due to the heavily overgrown nature of the rear part of the site. Due to the site clearance in the absence of a licence from Natural England to close the badger sett, a breach of the Badgers Act 1992 would

have occurred through damage/destruction of a badger sett. This matter has been referred to Hampshire Police and is being investigated.

- 8.17 The Council's Ecologist has also advised that as site clearance has already occurred, a Biodiversity Enhancement Strategy should be submitted prior to the commencement of the works. It should be noted that bat and bird boxes will not be accepted unless they are integrated into the design of the new building (i.e., bat bricks and bat tubes). Furthermore, planting of hedgerows within the private gardens will not be sufficient as their retention by the new owners could not be guaranteed. Therefore, an extensive soft landscaping scheme, incorporating species rich grasslands/meadows, new trees etc will be required.
- 8.18 Had the application been supportable, details of biodiversity net gain would have been sought and agreed with the Council's Ecologist prior to the determination of the application. The development is therefore considered to be contrary to Policies CS4 and DSP13.

f) Trees

- 8.19 The Council's Principal Tree Officer has considered the impact on the trees and raises no objection to the proposal.
- 8.20 Concerns have been raised by Third Parties regarding the type of trees proposed within the area of landscaping. However, the Tree Officer has raised no objection to this.
- 8.21 Concerns have also been raised regarding the distance between Plot Two and the ability to maintain the hedging and fencing along the boundary. This is a civil matter between the householder and the owners of the neighbouring dwellings.

g) Flooding

- 8.22 Policy CS15 (Sustainable Development and Climate Change) states that the Borough Council will promote and secure sustainable development and will achieve this by avoiding unacceptable levels of flood risk.
- 8.23 Paragraph 159 of the NPPF states that:
- 'inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (where existing or future) where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere'.*
- 8.24 Paragraph 161 states that:

'all plans should apply a sequential, risk-based approach to the location of development - taking into account all sources of flood risk and the current and future impacts of climate change - so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residential risk by:

a) Applying the sequential test and then, if necessary, the exception test as set out below.'

8.25 Paragraph 162 states that:

'The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allowed or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding'

8.26 Paragraph 163 states that:

'If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification'

8.27 Paragraph 164 states that:

'The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:

- a) The development would provide wider sustainability benefits to the community that outweigh the flood risk; and*
- b) The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall'.*

8.28 The Planning Practice Guidance (PPG) sets out how the sequential test should be applied following a risk-based approach to the location of development. It states that the sequential test should detail the name and address of the proposed development and an explanation of why the developer has chosen that specific site.

- 8.29 The PPG also explains of how the sequential test should provide details of alternative sites within the Borough. Details on the alternative sites should include the name and address of the site, whether it is an allocated site within the local plan, whether there are any issues that would prevent development, whether these issues could be overcome, and the approximate capacity of the site. Other details which need to be submitted include the status of the local plan and supporting documentation on alternative sites e.g. local plan background, evidence based documents and economic land availability assessments.
- 8.30 The applicant has submitted a sequential and exception test with this application. The statement acknowledges that the site is within Flood Zones 2 and 3. It states that the development provides all bedroom and living accommodation at first floor to ensure that future occupants are not at risk from flooding. This resulted in no objection from the Environment Agency, subject to full compliance with the submitted Flood Risk Assessment. The Environment Agency does not however have regard to the sequential or exception test, as this responsibly lies with the Local Planning Authority.
- 8.31 When seeking to justify the location of the site within a flood zone the statement explains that this location would be acceptable due to the fact that the local planning authority accept there is currently a shortfall in the authority's five-year housing land supply. Therefore, they say, the development would assist in addressing the shortfall in housing sites and the applicant believes this to be a significant consideration in the sequential and exception test. The statement claims that there are no other sufficient, alternative brownfield sites to meet housing delivery.
- 8.32 Officers have considered the sequential test and note that no details are provided to demonstrate that a search has been undertaken for alternative sites. More importantly, the sequential test fails to provide any details on alternative sites within the Borough in areas at lower risk of flooding (for example, that are not located within flood zones 2 and 3).
- 8.33 It is not considered that the addition of two dwellings would make a significant contribution to addressing the Council's current five year housing land supply shortfall, particularly where it has not been demonstrated there are no more preferable sites coming forward which lie in flood zone 1. Therefore, this cannot be used as a justification for the development and fails to meet the requirements specified in the PPG and NPPF.
- 8.34 In the absence of any evidence it cannot be concluded that there are no reasonably available alternative sites for two dwellings within the Borough that

are at lower risk of flooding. Therefore, the proposal is contrary to the requirements specified at paragraph 162 of the NPPF.

- 8.35 Officers note that the Environment Agency (EA) has raised no objection to the application. Officers must stress however that this advice is in relation to the technical aspects of the applicant's proposal to raise the internal finished floor level and to ensure that habitable space is restricted to the first floor only. The EA have not commented on the application of the sequential test, as this responsibility lies with the Local Planning Authority. Proposals such as raising floor levels and ensuring that habitable accommodation is at first floor level manage and mitigate the potential impact of flooding and should only be considered when it has been successfully demonstrated that it is not possible to locate the development elsewhere away from the risk of flooding. A development where risk is avoided is inherently safer than a development where risk requires mitigation or management. As stated above, it is for the local planning authority to consider the extent to which the sequential test, and where necessary, the exceptions test considerations have been satisfied.
- 8.36 It is therefore considered that the proposal fails to meet the requirements of the sequential test and therefore the exception test cannot be applied. Therefore, the proposed development is contrary to Policy CS15 and the NPPF which clearly states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with lower risk of flooding.

h) Impact on protected sites

- 8.37 Core Strategy Policy CS4 sets out the strategic approach to Biodiversity in respect of sensitive Protected Sites and mitigation impacts on air quality. Policy DSP13: Nature Conservation of the Local Plan Part 2 confirms the requirement to ensure that designated sites, sites of nature conservation value, protected and priority species populations and associated habitats are protected and where appropriate enhanced.
- 8.38 The Solent is internationally important for its wildlife. Each winter, it hosts over 90,000 waders and wildfowl including 10 per cent of the global population of Brent geese. These birds come from as far as Siberia to feed and roost before returning to their summer habitats to breed. There are also plants, habitats and other animals within The Solent which are of both national and international importance. In light of their importance, areas within The Solent have been specially designated under UK/ European law. Amongst the most significant designations are Special Protection Areas (SPA) and Special Areas of Conservation (SAC). These are often referred to as 'Protected Sites'(PS).

- 8.39 Regulation 63 of the Habitats and Species Regulations 2017 provides that planning permission can only be granted by a 'competent authority' if it can be shown that the proposed development will either not have a likely significant effect on designated Protected Sites or, if it will have a likely significant effect, that effect can be mitigated so that it will not result in an adverse effect on the integrity of the designated Protected Sites. This is done following a process known as an Appropriate Assessment.
- 8.40 Natural England has highlighted that there is existing evidence of high levels of nitrogen and phosphorus in parts of The Solent with evidence of eutrophication. Natural England has further highlighted that increased levels of nitrates entering The Solent (because of increased amounts of wastewater from new dwellings) will have a likely significant effect upon the Protected Sites.
- 8.41 The development would result in increased nitrogen loading from water sources and air pollution. The Council has published an Air Quality Habitat Regulations Assessment for the Fareham Local Plan 2037 which assesses the air quality impact for the life of the emerging Local Plan. However, no information has been provided by the applicant to address the adverse effects on water quality. The applicant has failed to provide Nitrate Mitigation on this proposal therefore, it is considered that the proposal should be refused on the grounds of the likely adverse impact of the development on the integrity of the Protected Sites.
- 8.42 The site lies within 5.6km of the Solent and Dorset Coast SPA, and Portsmouth Harbour SPA and Ramsar Site for which it is important to ensure that new residential developments, in combination with other developments, do not have a significant effect on the integrity of these sites as a result of increased recreational disturbance.
- 8.43 Policy DSP15 (Recreational Disturbance on the Solent Protection Areas) of the emerging Fareham Borough Local Plan Part 2: Development Sites and Policies explains that planning permission for proposals resulting in a net increase in residential units may be permitted where the 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution through the Solent Disturbance Mitigation Project (now known as the Solent Recreational Mitigation Partnership (SRMP)).
- 8.44 Had the proposal been found acceptable in all other regards the applicant would have been invited to make a financial contribution through the SRMP. In the absence however of such a contribution or the means to secure one, or the submission of evidence to demonstrate that the 'in combination' effects of

the development can be avoided or mitigated in another way, the proposal continues to be contrary to Policy DSP15.

- 8.45 In this particular case, no Appropriate Assessment has been carried out by the Local Planning Authority under the 'habitat regulations'. However, since the application is being recommended for refusal, there is no requirement to carry out an Appropriate Assessment.
- 8.46 It is therefore concluded that the development will have an adverse impact on the integrity of these Protected Sites due to the absence of secured mitigation and the adverse effects arising through increased wastewater output and recreational disturbance on the Protected Sites. The proposal is therefore contrary to Policies DSP13 and DSP15.

Conclusion

- 8.47 It is therefore considered that the proposal would not be acceptable and fail to meet the requirements of the, NPPF, PPG, Fareham Borough Core Strategy and the Fareham Local Plan Part 2: Development Sites and Policies.

9.0 ***Recommendation***

REFUSE PERMISSION for the following reasons:

The development would be contrary to Policy CS4 and CS15 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP3, DSP13 and DSP15 of the Adopted Local Plan Part 2: Development Sites and Policies Plan 2015, and paragraphs 159-164 of the NPPF and the Planning Practice Guidance and is unacceptable in that:

- i) The development would result in an unacceptable adverse impact on the living conditions of occupiers of neighbouring residential properties, namely 24 The Keep, due to the scale, bulk and massing of Plot Two on the rear garden area. The siting of Plot Two would result in an overbearing and oppressive impact, result in loss of outlook and sunlight for their rear garden;
- ii) The proposal fails to provide a sequential test that demonstrates that there are no other reasonably available sites appropriate for the proposed development in areas of lower risk of flooding;
- iii) The proposal would have likely adverse effects on the integrity of the Protected Sites around The Solent in combination with other developments due to the additional generation of the nutrients

entering the water environment and the lack of appropriate and appropriately secured mitigation.

- iv) The proposal fails to provide appropriate mitigation of the likely adverse effects on the integrity of the Solent Waters Special Protection Areas which, in combination with other developments, would arise due to the impacts of recreational disturbance;

10.0 Background Papers

P/21/1903/FP

FAREHAM

BOROUGH COUNCIL



52 Castle Street
Portchester
Scale 1:1250



© Crown copyright and database rights 2022 OS 100019110. You are permitted to use this data solely to enable you to respond to, or interact with, the organisation that provided you with the data. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.