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## Appeal Decision

Site visit made on 7 August 2019

**by David Wyborn BSc(Hons), MPhil, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 October 2019**

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**Appeal Ref: APP/A1720/W/19/3222404**

**The Grange, Oakcroft Lane, Fareham PO14 2EB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Jason Osborn of Driftstone Homes against the decision of Fareham Borough Council.
  - The application Ref P/18/0263/OA, dated 12 March 2018, was refused by notice dated 25 January 2019.
  - The development proposed is an outline application for the provision of up to 16 dwellings and two new vehicular accesses onto Ranvilles Lane and the relocation of the existing access onto Oakcroft Lane.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The original submission proposed a scheme of 26 dwellings. This was amended during the processing of the application and revised plans were submitted for a scheme of 16 dwellings. The description of the development above reflects the amended scheme and it is on the basis of these amended plans that I will determine the appeal.
3. The application was made in outline with details of access and layout for consideration at this stage and matters of appearance, landscaping and scale reserved.
4. The appellant has submitted a signed and dated Unilateral Undertaking (UU) to seek to address the reasons for refusal concerning affordable housing and the need to mitigate the recreational impacts on the Solent and Southampton Water Special Protection Area. The evidence indicates that the Council is satisfied that the obligations address the related reasons for refusal. The UU also contains obligations in respect of a Traffic Regulation Order and surfacing and maintenance of a public footpath. I will return to these matters later.
5. Since the Council refused the proposal, Natural England (NE) has published in June 2019<sup>1</sup> advice for Local Planning Authorities on achieving nutrient neutrality for new developments in the Solent region. This document has been drawn to my attention and NE is currently advising that there is uncertainty as to whether the waste water arising from new housing in the Solent area will

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<sup>1</sup> Natural England - Advice on Achieving Nutrient Neutrality for New Development in the Solent Region – June 2019.

have an adverse effect on protected wildlife sites. NE has advised in respect of this proposal, the European designated sites that would be potentially affected by waste water from the proposed development are the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Chichester and Langstone Harbours SPA and Ramsar site, Solent Maritime Special Area of Conservation (SAC) and the Dorset and Solent Coast potential SPA (the habitats sites).

6. I note that the appellant comments that this issue was not considered as part of the application, does not form a reason for refusal and has not had the opportunity to address the concerns. It is argued that the matters raised by NE are not material considerations in this appeal and are therefore not relevant.
7. However, I have a duty as the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) to consider whether the proposal would be likely to have a significant effect on the integrity of designated habitats sites in the area and therefore the matters raised by NE are ones that must be considered.
8. I am satisfied that both main parties and NE have been given the opportunity during the appeal process to comment on these matters and therefore would not be prejudiced by my consideration of them.

### **Main Issues**

9. In the light of the above, the main issues are:
  - the effect of the development on the integrity of the habitats sites, and
  - whether the proposed location of the development is acceptable having regard to the character and appearance of the area and development plan policies.

### **Reasons**

#### *Habitats sites*

10. NE advise that the water environment within the Solent region is one of the most important for wildlife in the United Kingdom and in this respect the Solent is internationally important. NE indicate that there are high levels of nitrogen and phosphorus input to this water environment with sound evidence that these nutrients are currently caused mostly by waste water from existing housing and agricultural sources and the resulting dense mats of green algae are impacting on the Solent's protected habitats and bird species.
11. There is uncertainty at the present time as to whether new residential development will further deteriorate the protected sites. NE indicate that one way to address this uncertainty is for new development to achieve nutrient neutrality. NE advise that achieving nutrient neutrality may be difficult for smaller developments and I appreciate that this matter has arisen during the processing of the application, nevertheless this issue needs to be examined based on the information before me.
12. It is NE's view, set out in the general advice, that there is a likely significant effect on the internationally designated sites (Special Protection Areas, Special Areas of Conservation, potential Special Protection Areas) due to the increase in waste water from the new developments coming forward.

13. While there was previously one sizeable property on the site, the development would result in an increase in the number of dwellings and in all likelihood an increase in the waste water. I have not been presented with robust evidence that the scheme would be nutrient neutral. Accordingly, in respect of this matter, I cannot be certain that the proposal would not, alone or in combination with other developments, significantly and adversely affect the integrity of the habitats sites.
14. The Council has been working with other bodies, including NE, on mitigation measures to address the nitrogen issue. The Council has published an Interim Nitrogen Mitigation Solution and this sets out a number of potential proposals which may be able to provide a solution to this issue. In the meantime, the Council is recommending that in any approval a Grampian condition could be attached such that the housing would not be occupied until a mitigation package addressing the additional nutrient input arising from the development has been submitted to and approved by the Local Planning Authority. The appellant is agreeable to the imposition of a Grampian condition to address this matter.
15. However, while the proposed mitigation measures appear promising and that work with partners is progressing to find solutions, the Council has explained that they presently have no timetable for this strategy to be completed. Some of the options, such as the creation of wetlands and the improvement to the Peel Common waste water treatment works, could potentially take some time to work through and become operational as part of a solution.
16. Based on the evidence before me, there appears to be uncertainty as to when a solution to address the nitrogen arising from the proposal would be in place. In these circumstances, I consider that I need to take a precautionary approach and that it would not be reasonable to attach a Grampian condition when I am not satisfied that the mitigation strategy would be in place within the time limit imposed on a permission or the situation may be that the dwellings would be built with no immediate prospect that they could be occupied.
17. In terms of the approach set out in the Habitats Regulations, while the information is that the proposal would provide housing to meet an identified requirement, I have not been provided with evidence that this is the only solution available to meet the housing needs in this case and that there are no other sites that could be demonstrated to be nutrient neutral. Furthermore, taking into account the merits of the case, I do not consider that there are imperative reasons of overriding public interest which would justify permitting the development.
18. On a further matter, the evidence also indicates that the site is located within the zone of recreational influence for the Solent and Southampton Water Special Protection Area. The Solent Recreation Mitigation Strategy (SRMS) advises that the Solent coast, particularly its mudflats, shingle and salt marshes, provide essential winter feeding and roosting grounds for birds that spend winter in the area. The wide range of recreational activities which take place on the coast can result in disturbance to the birds, albeit often unintentional and this can ultimately adversely affect the bird populations.
19. The SRMS aims to prevent bird disturbance from recreational activities in a strategic way. There is a contribution required for every net additional dwelling within the 5.6km zone unless it is demonstrated that bespoke proposals to fully

mitigate the impacts of recreational impact from the development would be provided.

20. The appellant has provided a signed and dated UU that provides the necessary financial contribution in accordance with the SRMS to mitigate the impacts from recreation. NE has previously advised that this would address this matter and with this mitigation secured, I am satisfied that this recreational impact would be satisfactorily addressed and comply with the requirements of Policy DSP15 of the Local Plan.
21. While the recreational pressures could be mitigated, I am not satisfied that this would be the case in respect of the impacts arising from the additional waste water from the residential development. Taking all the above matters into account, when undertaking an Appropriate Assessment, I conclude that the proposal would, alone or in combination with other developments, be likely to significantly and adversely impact on the integrity of the habitats sites and, as a consequence, this is a reason to withhold approval.

#### *Location of development*

22. Policy CS14 of the Fareham Core Strategy (adopted August 2011) (the Core Strategy) states that built development on land outside the defined settlements will be strictly controlled to protect the countryside from development and lists acceptable forms of development including that essential for agriculture, forestry, horticulture and required infrastructure.
23. Policy DSP6 of the Fareham Local Plan Part 2: Development Sites and Policies (adopted June 2015) (the Local Plan) sets out a presumption against new residential development outside of the defined urban settlement boundaries as identified on the Policies Map, subject to some specified exceptions.
24. The evidence indicates that the site is located outside the urban settlement boundary. The housing would not meet with any of the exceptions listed in the Policy CS14 of the Core Strategy or Policy DSP6 of the Local Plan and therefore the scheme would be contrary to the strategy for the location of development in this respect.
25. However, the Council accept that it cannot demonstrate a 5 year housing land supply of deliverable sites. In these circumstances, Policy DSP40 of the Local Plan is engaged. The policy allows, subject to meeting the relevant policy criteria, additional housing sites outside the urban area boundary, notwithstanding any conflict with the policies CS14 of the Core Strategy and Policies DSP6 of the Local Plan. Consequently, I consider the policy is the most relevant to the consideration of the proposal and, if the policy criteria would be met, it would help demonstrate that the location of housing would be satisfactory.
26. The Council do not highlight any substantial conflict with criteria i, ii, iv, and v of Policy DSP40 of the Local Plan. The site would be well related to the adjoining urban settlement, footpath links would assist with connectivity and the proposal is relative in scale to the demonstrated 5 year housing land supply shortfall. The scheme would appear to be deliverable in the short term, and that for the site itself, there are no unacceptable environmental, amenity or traffic implications that would justify withholding permission. As a consequence, I find no substantive conflict with these criteria of Policy DSP40.

27. The Council set out in their statement that the proposal would fail criterion iii of Policy DSP40 which requires that the proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, the Strategic Gaps.
28. The site is well screened from the Crofton Cemetery broadly to the east and the more open countryside to the north by established trees along these boundaries of the site. Within the site, while the land has an open and undeveloped character it has a reasonable affinity with the built development generally to the south which forms part of the wider urban area.
29. The presence of housing would alter the character of the site introducing a more developed appearance with buildings, roads, parking and activity. However, a sizeable part of the site is formed by the curtilage of now demolished dwelling and this already has elements of domestic presence. The layout of the housing would maintain a sizeable area of open space, with a fair amount of the housing in the area of the curtilage of the former house.
30. The site is reasonably self-contained from areas of open countryside by the boundary planting and the layout of the housing, retention of the most important trees, the opportunities for further landscaping and the areas of open space should provide a sympathetic transition from the urban area to the more open countryside beyond.
31. The cypressus tree screen alongside Ranvilles Lane leads to quite an oppressive feel and is not sympathetic with the general character of the tree cover in the wider landscape. Its removal and replacement with a more appropriate planting scheme would lead to a visual improvement to the appearance of this area, albeit that the housing would be visible within the site from these public vantage points.
32. The site is also within the Fareham-Stubbington Strategic Gap. However, the scheme would make only a minor incursion into the Gap and the boundary of the development would be clearly defined by the cemetery, Ranvilles Lane and Oakcroft Lane.
33. Taking all these matters into account, I consider that the scheme would meet the requirements of criterion iii of Policy DSP40 of the Local Plan and in turn the policy as a whole.
34. Policy CS22 of the Core Strategy indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements. The policy does not exclude all development within the Strategic Gap but requires an assessment of the impact against the policy criteria. As the scheme would make only a minor incursion into the Gap, the integrity of the Gap and the physical and visual separation of Fareham and Stubbington would not be significantly affected. There would be no material conflict with Policy CS22 in these circumstances.
35. In the light of the above, the development would not comply with Policy CS14 of the Core Strategy and Policy DSP6 of the Local Plan. However, because Policy DSP40 of the Local Plan is engaged and as the proposal would, amongst other matters, have an acceptable impact on the character and appearance of the area, I conclude that there would be overall compliance with the

development plan approach to the location of development in the circumstances where the Council cannot demonstrate a 5 year supply of deliverable housing sites. Furthermore, I also conclude that the details of the scheme would comply with Policy CS17 of the Core Strategy requiring high quality design, as far as can be demonstrated at this outline stage, and would comply with Policy CS22 of the Core Strategy for the reasons explained above.

### **Other Matters**

36. I have carefully considered the detailed representations and objections of local residents and other interested parties, and I have examined the substantive planning matters that have been raised under the various headings throughout this decision.
37. Broadly to the south of the site, lies Crofton Old Church, a Grade II\* listed building and the adjoining property 17 Lychgate Green, a Grade II listed building. Historic England has commented on the amended scheme to advise that the proposal would still cause a low level of harm arising from the erosion of the rural setting of the church through the creation of new development. I am conscious of the duty to have special regard to the desirability of preserving listed buildings, their setting and features of special architectural or historic interest which they possess. However, in the light of my overall conclusion, I have not needed to consider this matter further.

### **Planning Balance and Conclusion**

38. The scheme would provide a meaningful contribution towards housing delivery in a Council area that cannot demonstrate a 5 year housing land supply. The Framework seeks to significantly boost the supply of housing and that small and medium sized sites, such as the proposal, can make an important contribution to meeting the housing requirements of an area. Furthermore, there would be economic and social benefits during construction, and in subsequent occupation. The site has reasonably good access to local services and facilities which would reduce the reliance of future residents to be dependent on a private vehicle for all journeys.
39. The site was identified in the Strategic Housing Land Availability Assessment and I have found that the scheme would meet the overall locational approach to housing within the plan area, in a policy situation where there is an absence of an identified 5 year housing land supply. Also, the proposal would have an acceptable impact on the character and appearance of the area. All these are matters that weigh in favour of the proposal. Given that 16 dwellings are proposed and having regard to the level of housing land supply deficit, cumulatively I attribute these benefits moderate weight.
40. The UU includes an obligation to provide affordable units on site and a financial contribution. The Council confirm that this would meet the requirements of Policy CS18 of the Core Strategy and I have not found a reason to disagree that an appropriate level of affordable housing would be provided. I am satisfied that the obligation would meet the tests set out in paragraph 56 of the Framework. Given the overall quantity of affordable housing contribution this benefit affords moderate weight.
41. The obligation to address the recreational affect arising from the development on the SPA affords limited weight as this would mitigate the impact arising

- from the new housing. The obligations in the UU for the contribution to the Traffic Regulation Order and for the surfacing and future maintenance of the footpath meet the tests in paragraph 56 of the Framework and given that they would seek to largely offset the impacts of the development are deserving of limited weight in the considerations.
42. There would also be some highway safety benefits from the footway link along a part of Ranvilles Lane, because along this section pedestrians to the new housing and existing local residents would not need to walk in the road. The scheme would increase traffic movements because of the additional dwellings; however, the Authority Transport Planner has not raised objection to the scheme and overall, I consider that there would be a net benefit in relation to highway matters and safety, but this would be limited in extent.
43. The scheme would also have the potential to deliver open space and ecological improvements to the site in accordance with the recommendations set out in the various ecological reports and surveys. However, given the extent of the proposal in these respects I afford these benefits limited weight.
44. However, I have also concluded that the proposal would, alone or in combination with other developments, be likely to significantly and adversely impact on the integrity of the habitats sites. This would not comply with the requirements under the Habitats Regulations and the Framework, and is a matter of substantial weight. It is such that the policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development proposed. In these circumstances the presumption in favour of sustainable development as set out in paragraph 11d of the Framework is not engaged.
45. Taking all these matters into account, even if, in particular because of the compliance with Policy DSP40 of the Local Plan, I was to conclude that the proposal accorded with the development plan taken as a whole, the weight and importance I attach to the harm that would likely result to the integrity of the habitats sites is such that this outweighs the benefits of the scheme and development plan compliance, and therefore I conclude that the appeal should be dismissed.

*David Wyborn*

INSPECTOR