



## Appeal Decision

Site Visit made on 10 November 2021

by **A Tucker BA (Hons) IHBC**

an Inspector appointed by the Secretary of State

**Decision date: 02 December 2021**

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**Appeal Ref: APP/A1720/W/21/3279162**

**Land between and to the rear of 56-66 Greenaway Lane, Warsash, SOUTHAMPTON, SO31 9HS**

- 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 GR Dimmick, CD Dimmick & AW Williams against the decision of Fareham Borough Council.
  - The application Ref P/18/0756/OA, dated 11 July 2018, was refused by notice dated 18 March 2021.
  - The development proposed is outline application for up to 28 dwellings together with associated landscaping, amenity space, parking and a means of access from Greenaway Lane.
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### Decision

1. The appeal is allowed, and outline planning permission is granted for up to 28 dwellings together with associated landscaping, amenity space, parking and a means of access from Greenaway Lane at Land between and to the rear of 56-66 Greenaway Lane, Warsash, Southampton, SO31 9HS, in accordance with the terms of the application, Ref P/18/0756/OA, dated 11 July 2018, subject to the conditions in the attached schedule.

### Applications for costs

2. An application for costs was made by GR Dimmick, CD Dimmick & AW Williams against Fareham Borough Council. The application is the subject of a separate decision.

### Preliminary Matters

3. The planning application was submitted in outline form, with all matters reserved other than access. I have considered the appeal on this basis. The submitted plan, Sketch Layout – 01, indicates how the site could be developed for 28 dwellings. However, as matters of appearance, landscaping, layout and scale do not form part of the outline application I have treated these details as indicative only.
4. On 20 July 2021, during the appeal process, the Government published its revised National Planning Policy Framework (the Framework). Both parties have had an opportunity to comment on the revisions where they may be relevant to the case, and any comments received have been taken into account in determining the appeal.
5. The Council has advised that the Emerging Fareham Local Plan 2037 was submitted for examination on 30 September 2021. I am satisfied that this

emerging document should attract some weight in my determination of the appeal. I am also satisfied that the main parties have had opportunity to submit comments on its policies relative to the appeal proposal.

### **Main Issues**

6. The main issues are:

- a) Whether there would be likely to be a significant effect on the internationally important features of the Solent and Southampton Waters Special Protection Area (SPA) and Ramsar Site, Solent and Dorset Coast SPA, Portsmouth Harbour SPA and Ramsar Site, Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours SPA and Ramsar Site and the Solent and Isle of Wight Lagoons SAC, and
- b) The effect of the proposal on highway safety.

### **Reasons**

#### *Protected sites*

7. The sites listed above are collectively known as the Protected Sites around The Solent. The Solent is internationally important for its wildlife, which includes waders and wildfowl including 10% of the world's population of Brent Geese. The area is used by these species for feeding and roosting during the winter. The area also hosts plants, habitats and other animals which are of both national and international importance.
8. The appeal site is within 5.6km of the protected sites. The proposal is for up to 28 new dwellings and would therefore result in a permanent increase in people residing at the site. This increase could have a significant adverse effect on the protected habitats and interests of the protected sites because persons residing at the appeal site could access the protected area for leisure purposes. Human disturbance can increase bird mortality and impact migratory journeys and breeding, ultimately leading to a population reduction. On this basis, either alone or in combination with other plans and projects, the proposal would be likely to have a significant effect on the integrity of the Protected Sites and their relative features.
9. Natural England (NE) as the Statutory Nature Conservation Body was consulted by the Council. NE advises that without appropriate mitigation the proposal would have a significant effect on the protected sites. The Council has adopted Policy to mitigate against adverse effects from recreational disturbance on the protected sites, as agreed by the Solent Recreation Mitigation Partnership.
10. The appellants have agreed to make the necessary contribution towards the Solent Disturbance Mitigation Project in the event that the appeal is allowed, which would be secured by the submitted Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (UU). This secures an appropriate financial contribution towards a range of mitigation measures set out in the Solent Recreation Mitigation Strategy 2017, and accords with Policy DSP15 of the Fareham Local Plan Part 2: Development Sites and Policies 2015 (DSP).
11. NE has also highlighted the high levels of nitrogen and phosphorus input into the water environment of the protected area, and evidence that these nutrients

are causing eutrophication. NE advise that these inputs are mostly from agricultural practice or from wastewater from existing housing and other development. It is suggested that there is the potential for future housing developments in the area to exacerbate these impacts, risking their future conservation status.

12. The appellants have secured mitigation in response to the identified impact. This is in the form of the purchase of credits from the Hampshire & Isle of Wight Wildlife Trust, as confirmed in the letter dated 2 July 2021. These credits bind 1.45 hectares of land at Little Duxmore Farm, that would amount to a reduction in nitrates amounting to 33.75kg/N/year, and would be sufficient to mitigate the calculated impact.
13. In summary, the proposal would be unlikely to have a significant effect on the Protected Sites around the Solent. It would accord with Policy DSP15 of the DSP and Policies NE3 and NE4 of the Emerging Fareham Local Plan 2037 (ELP), which together seek to ensure that in combination effects from recreational disturbance and water quality effects on the protected areas are satisfactorily mitigated.

*Highway safety*

14. The main access to the site would be from Greenaway Lane. Vehicular access would be achieved to here from the west, as vehicular access to the east is permanently blocked. The Council advises that this length of the lane only serves 34 dwellings currently, that it is without pavements and has only limited street lighting. It is suggested that the route is popular for pedestrians.
15. At my visit I saw that the lane is well served by street lighting. Although without pavements the lane has good visibility and is a generous width. Along much of the lane's length there are areas of verge and accesses that would serve as places for refuge that would allow pedestrians to step off the road surface if necessary.
16. I am mindful that there are some drainage ditches beyond these areas of verge, however these appeared to be of limited length and did not appear to be so hazardous that they would render the sides of the road unsuitable as a refuge area. In any case the evidence before me suggests that the resulting level of traffic would remain low and the road has the characteristics that mean that it would remain safe for cyclists and pedestrians to use the main area of carriageway. The road would continue to carry only local vehicular traffic and drivers would be naturally cautious of hazards arising from vehicles and pedestrians emerging from numerous domestic accesses.
17. The appeal is supported by a thorough transport statement. I have reviewed this document carefully in the context of the many comments before me on this matter. I am satisfied that it is robust and well supported by on site observations and data. I have no reason to doubt the conclusion reached in this report, that the increase in vehicle movements would be imperceptible. Vehicle speeds would remain low, and the width of the road would be wide enough for a large vehicle to pass a pedestrian or cyclist safely.
18. I do however accept that the proposal would result in a modest increase to the number of people who would walk along the lane, and that pedestrian behaviours may change as a result of the proposal as people choose to walk

through the development site's north access towards nearby services and facilities, or to walk between residential areas as these develop. As such, I consider it necessary to secure additional signage to make motorists aware that pedestrians may be within the carriageway. This requirement is included within the submitted UU.

19. In summary, the proposal would not harm highway safety. It would accord with Policy DSP40 (v) of the DSP and Policy TIN2 of the ELP, which together seek to ensure that development proposals do not have any unacceptable traffic implications.

### **Legal Agreement**

20. The signed and dated UU was submitted during the appeal process. The Council has had opportunity to comment on its content.
21. The Council's third refusal reason refers to the lack of a legal agreement to secure financial contributions towards education. The submitted UU includes education contributions, and accords with the communication from the Council's Children's Services Department. I am satisfied that this overcomes the Council's third refusal reason.
22. The Council's fourth refusal reason refers to the failure of the proposal to secure an appropriate level of affordable housing. Policy CS18 of the Fareham Core Strategy 2011 (CS) requires the provision of 40% affordable homes. The submitted UU accords with this requirement, and addresses the circumstances where 40% of the units equates to a number of units that is not a whole number. I am satisfied that this provision accords with Policy CS18 and overcomes the Council's fourth refusal reason.
23. The Council's fifth refusal reason refers to the failure of the proposal to secure highway improvements necessary to meet the needs of existing and future occupiers. The submitted UU includes improvements considered necessary by the Highway Authority. I am satisfied that this would overcome the Council's fifth refusal reason.
24. The Council's sixth refusal reason refers to the failure of the proposal to secure pedestrian and cycle links with the adjoining developments. The submitted UU includes a provision for the formation, laying out and provision of pedestrian and cycle routes. I am satisfied that this would overcome the Council's sixth refusal reason.
25. With reference to the tests set out at paragraph 57 of the Framework, I can conclude that the obligations sought by the submitted UU are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development.

### **Other Matters**

26. The Council accepts that it cannot currently demonstrate a 5 year supply of deliverable housing sites (5YHLS). Its position report of 17 February 2021 concluded that it has a supply of 4.2 years. The appellants suggest a much lower shortfall.

27. The proposal would be contrary to Policies of the CS that relate to the location of new development as the site is outside a development boundary. However, Policy DSP40 of the DSP accounts for the situation where there is a shortfall in 5YHLS. It allows housing development to come forward outside of development boundaries in such circumstances, subject to certain criteria. The Council's assessment of the proposal in light of this Policy is set out in its Committee Report. Here it concluded that the proposal, when considered against the development plan as a whole, should be approved. At the subsequent committee meeting the proposal was refused; however, the principle of the development, its location and its relationship to the development boundary did not form reasons for refusal. These are therefore not principle matters of dispute between the main parties.
28. I am mindful of the various representations before me regarding the principle of developing the site and I have reviewed the proposal against Policy DSP40. The proposal for up to 28 dwellings is relative in scale to the 5YHLS shortfall, even if I accept the Council's level of undersupply. It is well related to the existing settlement boundary, which is nearby to the east of the site, and would relate well to the developed character of the area. There is nothing before me to suggest that the site represents a strategic gap that should be left undeveloped to safeguard local character. In this respect I note that significant areas of woodland adjacent to the site would be retained, which would significantly restrict the proposal's urbanising effect. The details of the design are not before me at this stage as the proposal is in outline form. However, I am confident that a detailed design can be developed that would reflect the character of the lane and wider area.
29. The proposal is limited in scale and therefore capable of being delivered in the short term. I have found that it would not have any traffic or environmental implications. Regarding amenity, the neighbouring dwellings to either side occupy large plots. I can see no reason why a detailed scheme cannot be brought forward that would ensure that the living conditions of the occupiers of these dwellings are safeguarded.
30. The site is part of a housing allocation for 824 dwellings set out in Policy HA1 of the ELP. The Policy suggests that primary highway access should be focused on Brook Lane and Lockwood Road with limited access via Greenaway Lane where necessary, subject to consideration of the impact on the character of the lane. The Policy suggests that access from the lane should be limited rather than prevented entirely. Evidence before me establishes that alternative access into the site that avoids Greenaway Lane is not possible. The proposal would be for up to 28 dwellings, which would be limited in the context of the number of dwellings covered by the whole allocation. I have already established that I see no reason why the character of the area could not be safeguarded in a forthcoming detailed scheme.
31. I am therefore satisfied that the proposal would accord with Policy DSP40 of the DSP and Policy HA1 of the ELP. I can thus conclude that the proposal would be in accordance with the development plan as a whole, and there are no other material considerations that would cause me to reach a different conclusion.

## Conditions

32. I have had regard to the planning conditions that have been suggested by the Council and the appellants, and have considered them against the tests in the Framework and the advice in the Planning Practice Guidance.
33. I have imposed a condition to specify the matters that are reserved and not included within this outline permission, and an approved plan condition for reasons of certainty. The Council suggested that the reserved matters application should be made within 12 months of the date of this decision, and that the scheme should also be commenced within 12 months of the date of the approval of the last reserved matters. I am satisfied that these short periods of time are justified to assist with the delivery of housing development, taking into account housing land supply matters in the Borough, with reference to paragraph 77 of the Framework. I note that the appellants have not objected to this suggested time frame.
34. I have imposed a condition to secure a construction management plan, to manage the impacts during the construction phase on the occupiers of nearby dwellings and in the interest of highway safety. This condition needs to be pre-commencement as the agreed plan needs to be in place before any work commences.
35. I have imposed conditions relating to highways, parking, bicycle and bin storage in the interests of highway safety, to ensure that alternative transport options are available to future residents and to safeguard the character and appearance of the area. The first of these is a pre-commencement condition as it is necessary to understand the existing topography accurately before work commences and ensure that access to the site is delivered in a timely manner.
36. I have imposed conditions relating to contaminated land to ensure that the site conditions and potential contamination is properly understood, and any necessary mitigation is carried out. The investigation and assessment condition needs to be a pre-commencement condition to ensure that site conditions can be investigated before the development takes place.
37. I have imposed conditions relating to surface water and foul water drainage to ensure that water at the site is adequately managed. These conditions need to be pre-commencement conditions to ensure that site conditions are properly assessed before work commences and the appropriate measures are in place to avoid the adverse impacts of inadequate drainage.
38. I have imposed a condition to ensure that the archaeological interest of the site is properly understood, as the site is in an area of archaeological interest. This needs to be a pre-commencement condition to ensure the opportunity is given to investigate the site before potentially destructive construction work commences.
39. I have imposed a condition to ensure that the development is carried out in accordance with the submitted tree report to ensure existing vegetation on site is adequately protected during the construction phase. I have also imposed a condition that refers to the submitted biodiversity report to conserve and enhance biodiversity at the site.
40. I have imposed a condition to secure water efficiency measures at each dwelling, in the interest of preserving water quality.

**Conclusion**

41. For the reasons above, and taking into account all matters raised, I conclude that the appeal should be allowed.

*A Tucker*

INSPECTOR



## Schedule of Conditions

- 1) Details of the appearance, layout and scale of the buildings, and the landscaping of the site (all referred to as the 'reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of all reserved matters shall be made to the Local Planning Authority within 12 months from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiration of 12 months from the date of the approval of the last reserved matters.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Land between and to the rear of 56-66 Greenaway Lane Scale 1:2500, LP01 P1 and SKL-01 Rev L but only insofar as it relates to access.
- 5) No development shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority (LPA). The CMP shall address the following matters:
  - a) How provision is to be made on site for the parking and turning of operatives'/contractors'/sub-contractors' vehicles and/or construction vehicles;
  - b) the measures the developer will be implementing to ensure that operatives'/contractors'/sub-contractors' vehicles and/or construction vehicles are parked within the planning application site;
  - c) the measures for cleaning the wheels and underside of all vehicles leaving the site;
  - d) a scheme for the suppression of any dust arising during construction or clearance works;
  - e) the measures for cleaning Greenaway Lane to ensure that it is kept clear of any mud or other debris falling from construction vehicles;
  - f) the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the approved development;
  - g) when construction work takes place. It is suggested that no construction work, including demolition or preparation, shall take place before 08:00 or after 18:00 Monday to Friday, before 08:00 or after 13:00 on Saturdays or at any time on Sundays or a recognised public or bank holiday.

The development shall be carried out in accordance with the approved CMP and areas identified in the approved CMP for specified purposes shall thereafter be kept available for those uses at all times during the construction period, unless otherwise agreed in writing with the LPA. No construction vehicles shall leave the site unless the measures for cleaning the wheels and underside of construction vehicles are in place and operational, and the wheels and undersides of vehicles have been cleaned.



- 6) No development shall commence until details of the width, alignment, gradient and type of construction proposed for any roads, footways and/or access(es), including all relevant horizontal and longitudinal cross sections showing the existing and proposed ground levels, together with details of street lighting (where appropriate), the method of disposing of surface water, and details of a programme for the making up of roads and footways, have been submitted to and approved in writing by the Local Planning Authority. The development shall be subsequently carried out in accordance with the approved details.
- 7) No dwelling hereby permitted shall be occupied until it has a direct connection, less the final carriageway and footway surfacing, to an existing highway. The final carriageway and footway surfacing shall be commenced within three months and completed within six months from the commencement of the penultimate building or dwelling for which permission is hereby granted. The roads and footways shall be laid out and made up in accordance with the approved specification, programme and details.
- 8) No dwelling hereby permitted shall be occupied until the approved parking and turning areas (where appropriate) for that property have been constructed in accordance with the approved details and made available for use. These areas shall thereafter be kept available for the parking and turning of vehicles at all times unless otherwise agreed in writing by the Local Planning Authority following the submission of a planning application for that purpose.
- 9) No dwelling hereby permitted shall be occupied until the associated bicycle storage, as shown on the approved plan, has been constructed and made available. This storage shall thereafter be retained and kept available at all times.
- 10) No dwelling hereby permitted shall be occupied until details of the proposed bin storage areas (including bin collection points if necessary) have been submitted to and approved in writing by the Local Planning Authority and the approved areas fully implemented. The details shall include the siting, design and the materials to be used in construction. The areas shall be subsequently retained for bin storage or collection at all times.
- 11) No development shall commence until an intrusive site investigation and an assessment of the risks posed to human health, the building fabric and the wider environment including water resources has been carried out. The site investigation assessment should be submitted to and approved in writing by the Local Planning Authority. Where the site investigation and risk assessment reveals a risk to receptors, a strategy of remedial measures and detailed method statements to address identified risks shall be submitted to and approved in writing by the Local Planning Authority. It shall also include the nomination of a competent person (to be agreed with the Local Planning Authority) to oversee the implementation of the measures.

- 12) No dwelling hereby permitted shall be occupied until the agreed scheme of remedial measures has been fully implemented. Remedial measures shall be validated in writing by an independent competent person as agreed with the Local Planning Authority. The validation is required to confirm that the remedial works have been implemented in accordance with the agreed remedial strategy and shall include photographic evidence and as built drawings where required by the Local Planning Authority. The requirements of the Local Planning Authority shall be agreed in advance.
- 13) No development shall commence until a surface water drainage system for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development has been submitted to and approved in writing by the Local Planning Authority, having regard to the specifications set out in the response from Hampshire County Council consultation in the letter dated 5 February 2019. The scheme shall subsequently be implemented in accordance with the approved details before the occupation of any dwelling.
- 14) No development shall commence until details of the means of foul water drainage from the site have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details unless otherwise agreed with the Local Planning Authority in writing.
- 15) No development shall commence until a written scheme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.
- 16) The development hereby permitted shall be undertaken in full accordance with the recommendations of the SJ Stephens Tree Report (ref: 1147 – June 2018). There shall be no deviation from this report without the prior written approval of the Local Planning Authority.
- 17) The development hereby permitted shall proceed in accordance with the measures set out in the Biodiversity Mitigation and Enhancement report by Ecosupport (September 2018). Thereafter the enhancements shall be permanently retained in accordance with the approved details. On completion of the works, a report of action detailing the implemented mitigation and enhancement measures, with photographic evidence, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of any dwelling on site.
- 18) No dwelling hereby permitted shall be occupied until details of water efficiency measures to be installed in each dwelling have been submitted to and approved in writing by the Local Planning Authority. These water efficiency measures should be designed to ensure potable water consumption does not exceed a maximum of 110 litres per person per day.

The development shall be carried out in accordance with the approved details.

**END OF SCHEDULE**