The Planning Inspectorate

Appeal Decision

Site visit made on 7 September 2015

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 28 September 2015

Appeal Ref: APP/W1715/W/15/3023067
Land at Station Road, Bursledon SO31 8AA

- 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 SO31 Land Ltd against the decision of Eastleigh Borough Council.
- The application Ref O/14/74970, dated 16 July 2014, was refused by notice dated 22 October 2014.
- The development proposed is construction of up to 3 residential dwellings.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters reserved. I have dealt with the appeal on that basis.

3. The decision notice cites various policies from the Submitted Eastleigh Borough Local Plan 2011-2029. It is common ground that this document should be afforded very limited weight in the determination of the appeal. Although the plan has not been formally withdrawn, it was found to be unsound by the examining Inspector and therefore the Council has decided to prepare a new local plan which will cover the period until 2036. My assessment has therefore been made against the saved policies of the Eastleigh Borough Local Plan Review (2001-2011) (LP) which remains the statutory development plan in force.

4. A number of the refusal reasons relate to insufficient information. Part 3, Article 5(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 allows a local planning authority to request additional details in relation to applications for outline planning permission. For whatever reason this provision was not invoked. My consideration of the appeal is therefore based upon the documentation which was in front of the Council when making its decision.

Main Issues

5. The main issues in this case are:

   a) whether the principle is acceptable, having regard to development plan policy, the National Planning Policy Framework and the Council's supply of housing land;

b) whether the proposed development would preserve or enhance the character or appearance of the Old Bursledon Conservation Area, having particular regard to the effect on protected trees;

c) the effect upon ecology and biodiversity, with respect to protected species and European sites;

d) whether the proposed development would be at risk from flooding, or would increase the risk of flooding elsewhere; and

e) whether the scheme would provide acceptable living conditions for future occupiers, with reference to noise and ground contamination.

Reasons

Principle of development

6. The appeal site lies outside of the urban edge and is therefore treated as being in the countryside for the purposes of interpreting planning policy. Saved Policy 1.CO of the LP restricts development in the countryside to that required for agriculture, forestry or horticulture, outdoor recreation or the provision of a public utility service or education or health facility. The proposal would not fall into any of these categories.

7. The stated purpose of saved Policy 1.CO is to protect the countryside. In this respect its objectives are consistent with the core principle of the National Planning Policy Framework (the Framework) that planning should recognise the intrinsic character and beauty of the countryside. However, the policy also has the effect of restricting housing development beyond the urban edge. It therefore has a dual role in controlling the supply of housing.

8. The Council concedes that it cannot demonstrate a five year supply of deliverable housing sites. Paragraph 49 of the Framework explains that in such situations relevant policies for the supply of housing should not be considered up-to-date. Paragraph 14 of the Framework states that where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless 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.

9. Having regard to the above, I consider that the conflict with development plan policy in respect of the site location outside of the urban edge should not be fatal to the application. There is a need to look beyond this, and to consider the detailed aspects of the proposal before making a balanced judgement of the planning merits against the principles of sustainable development.

Conservation Area

10. The appeal site lies within the Old Bursledon Conservation Area. It also falls within a locally designated 'special policy area' in the LP. The boundaries of these two designations do not conform. Nevertheless, it seems to me that they have a common purpose in seeking to protect the distinctive local character and identity.

11. The Conservation Area comprises an area of low density housing, woodland, open fields and salt marshes adjacent to the River Hamble. The northern

boundary abuts the main built-up area of Bursledon and is only a short distance from the busy M27 and other major transport routes. Despite this, the area has a pleasant rural charm, with scattered housing and various parcels of undeveloped land served by a network of narrow country lanes and public footpaths. One notable feature is the preponderance of trees which contribute positively to the character and appearance of the area.

12. Saved Policy 179.LB of the LP states that in order to protect the special loose-knit character of Old Bursledon and to ensure the protection of existing open areas, further development will be refused within the special policy area with the exception of replacement dwellings, appropriate extensions or changes of use. The proposal would not fall into any of these categories and therefore it would conflict with development plan policy in this regard.

13. The site comprises a roughly triangular shaped parcel of woodland sandwiched between Station Road and a railway embankment. The northern boundary abuts the road and there are public views into the site. According to the submitted arboricultural report the woodland does not contain any individual trees of notable merit or value, and all fall within Category C under the BS5837:2012 method of classification.

14. Notwithstanding this, it appears to me that the significance of the site lies in its sylvan nature and the positive contribution this makes to the character of this part of the Conservation Area and special policy area. This is reflected in the fact that the entire woodland is protected by a Tree Preservation Order. Although the area is overdue for management, this in itself does not provide justification for the development.

15. The arboricultural report includes an indicative layout plan which proposes the retention of identified woodland blocks and new planting along the road frontage. Whilst this may help to reduce the impact of the development it would not satisfactorily address the harm which would arise from the loss of trees. In my judgement, the development of this land for housing would urbanise the site to the detriment of its attractive verdant character. I can appreciate that the impact would be localised. However, I consider that the proposal would detract from the street scene in Station Road.

16. Accordingly, I conclude on this issue that the proposal would fail to preserve or enhance the character or appearance of the Old Bursledon Conservation Area. This would conflict with saved Policies 59.BE, 169.LB and 179.LB of the LP. These collectively seek to ensure that new development has regard to the local context and does not harm the special character of Old Bursledon.

Ecology and biodiversity

17. The submitted Preliminary Ecological Appraisal describes the site as being dominated by broad-leaved semi-natural woodland with discrete areas of ruderal vegetation and scrub and a stream running through the north-western extent. The report confirms that these conditions would support protected species including breeding birds, badger, bats and dormouse.

18. The need for further survey work is identified in order to inform any mitigation measures required. I am told that these measures would be dependent upon the design of the proposal which is yet to be drawn up. Notwithstanding this, it is incumbent upon me to establish in advance of granting planning permission

whether protected species are likely to be affected. This enables me to consider whether the derogation tests set out in the Habitats Regulations[1] have been met. The level of information submitted to-date provides a useful starting point but is not sufficient to enable me to discharge my duty as decision maker.

19. The appellant argues that the Council would have the power to decide whether the ecological mitigation measures are acceptable as part of the reserved matters. However, they are directly relevant to the principle of development and as such need to be considered at this stage.

20. The site lies in close proximity to the Lincegrove and Hackett's Marshes Site of Special Scientific Interest (SSSI), the Solent Maritime Special Area of Conservation (SAC), the Solent and Southampton Water Special Protection Area (SPA) and wetland of international importance under the Ramsar Convention.

21. I am required to consider whether the proposal would have a significant effect on the interest features for which these sites are designated. However, the information provided is very limited and therefore it is impossible to establish with any certainty the likely impacts. Indeed the ecological report itself concludes that the potential impact on the SAC cannot be predicted at this stage. Given the high probability of the site being linked hydrologically to the saltmarsh and mudflats of the Hamble estuary this is not satisfactory.

22. Turning now to the SPA, Natural England advises that the additional recreation pressure resulting from an increase in population within the 5.6 kilometre buffer zone of this designation would, without mitigation, harm the integrity of this European designated site. Reference is made to the need for a contribution of £170 per dwelling as part of the Solent Disturbance Mitigation Project. I am told that payment has already been made directly to the Council. However, the monies have not been properly secured and therefore I cannot be confident that they would be spent on the relevant project. As such, I am unable to conclude that the potential adverse effects on the SPA would be properly mitigated.

23. To conclude on this issue, I find that the proposal would have an unacceptable adverse effect on ecology and biodiversity, contrary to the objectives of saved Policies 22.NC, 23.NC, 25.NC, 32.ES and 41.ES of the LP. These policies seek to protect sites of nature conservation value.

Flooding

24. The Environment Agency flood map shows that the land lies within tidal Flood Zones 2 and 3 of the River Hamble Estuary. The map also indicates that the site is at a high risk of surface water flooding associated with the unnamed watercourse that flows along the north-western boundary.

25. The Framework seeks to direct development away from areas of highest flood risk through the application of the Sequential Test. This ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. Paragraph 101 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

[1] Conservation of Habitats and Species Regulations 2010, as amended

26. The appellant has sought to demonstrate, by reference to other land on the market, that there are no reasonably available sites suitable for the proposed development. The Council does not contest this part of the evidence and I have no reason to take a different view.

27. The submitted Flood Risk Assessment acknowledges that the site is at risk of flooding and proposes physical mitigation measures to ensure that the development is safe and does not increase the risk of flooding elsewhere. This would include the raising of ground levels and alterations to the watercourse to increase flow capacity.

28. Whilst there is no evidence to suggest that these measures would be ineffective, I cannot be certain that they would result in a development which would preserve or enhance the character or appearance of the Conservation Area. Moreover, it is unclear whether the works would be compatible with any ecological mitigation measures required to address the effect on protected species.

29. As it stands, whilst the flood risk is capable of being adequately mitigated I am not confident that an acceptable scheme could be achieved overall. Therefore, whilst the scheme could comply with saved Policies 40.ES, 41.ES, 42.ES, 43.ES and 44.ES of the LP in respect of flooding, it may not be compatible with other development plan policies which seek to protect local character and biodiversity.

Living conditions

30. The Portsmouth to Southampton railway line runs along the south-eastern boundary of the site atop an embankment. The Council is concerned regarding the absence of any information to inform a judgement on whether future occupiers would be disturbed by noise from passing trains.

31. Although not heavily used, the railway line provides an hourly service in each direction. I observed a number of trains passing during my visit and stopping at Bursledon Station. I noted that the line is electrified and this keeps noise levels down. There would be some disturbance within the gardens of the new properties but in my view it would not be significant enough to justify dismissing the appeal. The dwellings themselves could be designed to ensure acceptable noise levels within the buildings and such measures could be secured by planning condition.

32. Concerns are also raised regarding the potential for the development to be affected by ground contamination, notably landfill gases produced by the natural geology. However, no substantive evidence has been advanced in support of this refusal reason and in my opinion the matter could be dealt with by a suitably worded planning condition in the event of permission being granted.

33. I therefore conclude on this issue that the development would be capable of providing an acceptable living environment for future occupiers. As such, there would be no conflict with saved Policies 30.ES and 35.ES of the LP with regard to protecting future occupiers against noise and securing contaminated land remediation respectively.

Planning balance

34. I have concluded above that the proposal would result in harm to the Old Bursledon Conservation Area. Section 72 of the Planning (Listed Buildings and

Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. This consideration therefore carries significance importance and weight.

35. I have also identified potential harm in respect of protected species and the impact upon European sites. These matters are also of great importance, given the responsibilities placed on me by the Habitats Regulations and the relevant Directives.

36. Against this I must weigh the benefits of providing an additional three dwellings in a sustainable location with good access to public transport. The Council is unable to demonstrate the requisite supply of housing land and the proposal would therefore assist in addressing the shortfall against the background of national policy which seeks to boost significantly the supply of housing.

37. New housing would contribute to the social role of sustainable development. Although not mentioned by the appellant, there would also be economic benefits by providing employment during construction. However, paragraph 8 of the Framework makes clear that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.

38. In harming the Conservation Area and ecological interests, the proposal would not promote the environmental aims of sustainable development. Considered in the terms of paragraph 14, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. I therefore conclude that the proposal is unacceptable.

39. I have given consideration to the appellant's suggestion of permitting fewer dwellings on the site. However, whilst fewer trees would need to be lost there would also be a commensurate reduction in the benefits of the scheme. For this reason I do not consider this to be an appropriate solution.

Other Matters

40. The Council has withdrawn its request for contributions towards the provision of community infrastructure, off-site public open space and sustainable integrated transport works. However, the changes of Government policy which led to this decision have recently been set aside by the courts[2]. I am therefore mindful that the Council may have reconsidered its position. However, the appeal is being dismissed for other reasons and therefore my decision does not turn on this matter.

Conclusion

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

Robert Parker

INSPECTOR

[2] *West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government [2015] EWHC 2222 (Admin).*