The Planning Inspectorate

Appeal Decision

Site visit made on 10 October 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 04 November 2016

Appeal Ref: APP/W1715/W/16/3150918
Land north of Boyatt Lane, Eastleigh SO50 4LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
- The appeal is made by Cranbury Estates Ltd against the decision of Eastleigh Borough Council.
- The application Ref O/15/77009, dated 14 August 2015, was refused by notice dated 25 November 2015.
- The development proposed is the erection of 2 no. three bedroom dwellings, associated car ports and access. Appearance and landscaping to be reserved, all other matters to be determined.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with matters of appearance and landscaping reserved (the 'reserved matters'). Therefore, other than in respect of access, layout and scale which are not reserved, the plans supporting the application are illustrative of the development proposed.

3. A plan which supported the original proposal has subsequently been amended.[1] As this amended plan does not alter the proposal but rather illustrates the intended layout of parking spaces, and as it was considered by the Council in reaching a decision, I am satisfied that it is appropriate to have regard to it here.[2]

4. Within the information before me the appeal site is also referred to as Elock's Paddock and Elock's Meadow. I have not used such names as there is no information before me as to whether they remain current.

5. The postcode of the appeal site is given within the Council's decision notice as SO50 4LJ, and I have amended the banner heading accordingly as this is more precise than simply SO50 as was used in the application form.

[1] Plan entitled BRS.5528_02-2D as opposed to its predecessor BRS.5528_02-2C.
[2] The relevant plans are therefore BRS.5528_01B and BRS.5528_02-2D.

6. The Council cited as a reason for refusal in their decision notice that at the time the application was mate it was not supported by suitable financial contributions in respect of various matters. An associated unilateral obligation is now before me. However following changes to *The Planning Practice Guidance* (the 'Guidance') the Council has withdrawn this reason for refusal and clarified that no such contributions are required.[3] I have approached the appeal on this basis.

7. The Council cite various policies from the submitted *Eastleigh Borough Local Plan 2011-2029, Revised Presumbission* (the 'submitted plan') in their decision notice.[4] However the inspector examining the submitted plan found it to be unsound in February 2015, and the Council have indicated as a consequence that it is no longer progressing. It is therefore not disputed that the submitted plan can consequently only be accorded highly limited weight, a position with which I have no reason to disagree.

Main Issues

8. The main issues are:

   1) whether or not the location of the proposal is appropriate with reference to local and national planning policy,

   2) the effect of the proposal on the character and appearance of the immediate area, and

   3) whether or not the proposal would be acceptable in respect of its effect upon the *River Itchen Special Area of Conservation* (the 'SAC') and in relation to ecology.

Reasons

Location

9. The appeal site is currently an untended field at a northern reach of the *Boyatt Wood – Otterbourne Hill and Allbrook Local Gap* (the 'Local Gap') as established within the *Eastleigh Borough Local Plan Review (2001-2011)* adopted originally in May 2006 (the 'Local Plan'). Boyatt Lane abuts the south eastern boundary of the appeal site, and becomes a public footway as it tracks westwards, narrows, and passes underneath the nearby A335. At the time of my site visit, mid-afternoon, I observed a regular flow of pedestrians along Boyatt Lane in this location. The M3 falls at a short distance to the west.

10. The appeal site abuts the plot associated with No 1 Boyatt Crescent and faces a similarly untended field across Boyatt Lane, and, at an angle, a pair of semi-detached properties. Bounded in the main by mature trees and banks of vegetation, to the west and north the site is surrounded by a densely wooded

[3] Reference ID: 23b-031-20160519.
[4] Policies S9 '*Countryside and countryside gaps*, DM1 '*General criteria for new development*', and DM9 '*Nature conservation*'.

area which I understand is at least in part ancient woodland. By virtue of falling beyond the currently limits of the built form of dwellings comprising Otterbourne Hill, being an undeveloped parcel of land bounded by trees and vegetation, and by connecting with surrounding woodland, in my view the appeal site is clearly in character part of the countryside.[5]

11. Saved policy 3.CO of the Local Plan prevents development within a Local Gap where such development cannot '*acceptably located elsewhere*' and where it would diminish the gap '*physically or visually*'. Policy S9 of the submitted plan similarly establishes such gaps exist '*in order to maintain the separate identify of settlements*'. Saved policy 18.CO of the Local Pan sets out that development which fails to respect the intrinsic character of the landscape will be refused.

12. The proposal is for two dwellings served by a shared access with Boyatt Lane. Whilst the majority of trees and vegetation bounding the appeal site would be unaffected by the development proposed, as indeed would surrounding woodland, the proposal would nevertheless require the removal of a significant element of the bank of trees and vegetation bounding Boyatt Lane.[6]

13. Although there are few vantage points in the wider area from which the dwellings would be visible, they would nevertheless be clearly apparent to those making use of Boyatt Lane (which I have identified above appears to be regularly frequented). Viewed from this location the dwellings would introduce a built form into what is essentially a natural area at present, extend the settlement of Otterbourne Hill towards the A335 and thereby result in a visual and physical reduction of the Local Gap to the detriment of the current landscape character here. There is no robust evidence before me to indicate that two homes could not be acceptably located elsewhere.

14. For these reasons the proposal conflicts with the approach in saved policies 3.CO and 18.CO of the Local Plan, and indeed with that of policy S9 of the submitted plan. I now turn to the weight that can be accorded to this conflict.

15. The Council acknowledge that they cannot presently demonstrate a five-year supply of deliverable housing sites in line with the approach within the *National Planning Policy Framework* (the 'Framework'). They indicate that a supply of approximately 4.5 years can be demonstrated, notwithstanding that this approach is yet to be tested at examination.[7]

16. The Framework establishes that where a five-year supply cannot be demonstrated '*relevant policies for the supply of housing should not be considered up-to-date*'. Relatedly paragraph 14 of the Framework sets out that for decision-taking where relevant policies are out of date 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

[5] I would note here the difference in the character of the appeal site compared to that in appeal Ref APP/W1715/W/15/3139371, which has been brought to my attention. In that case the inspector identified that the appeal site was '*almost completely separate visually and perceptually from the wider countryside*'.
[6] Subject to compliance with the approach set out in the *Arboricultural Report, Impact Assessment and Draft Tree Protection Plan*, prepared by Pegasus Group, ref BRS.5528_A, dated 15 June 1015.
[7] Referencing in this context a recent iteration of the Council's *Housing Implementation Strategy*.

Framework taken as a whole; or specific policies in the Framework indicate that development should be restricted.

17. It is therefore significant, and disputed, as to whether policies 3.CO and 18.CO are relevant policies for the supply of housing. Here the Council has brought appeal APP/W1715/W/14/3001499 to my attention. The inspector in that case identified on the basis of the evidence before him that policy 3.CO was a current development plan policy and should be accorded due weight, however described the law in this respect at that juncture as '*seemingly in a state of flux*'.

18. In arriving at this decision he referenced specifically the *South Northamptonshire Council Judgement* as refined by subsequent decisions.[8] However this matter has been the subject of subsequent litigation, notably the *Hopkins Judgement* handed down on 17 March 2016.[9]

19. The *Hopkins Judgement* explains that the concept of relevant policies for the supply of housing '*extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed*', and that '*we cannot see any logical basis for distinguishing here between restrictive policies of a general nature and those with a more specific purpose*', a wider interpretation than was arrived at in certain previous judgements. Paragraphs 36 and 37 of the judgement further clarify that the specific geographic application of a policy, such as those protecting gaps between settlements, is not valid as '*a test of whether a particular policy is or is not a policy 'for the supply of housing''*.

20. Whilst I acknowledge that Local Gaps are specifically defined rather than general policies, and are contained within the countryside section of the Local Plan, nevertheless in line with the approach in the *Hopkins Judgement* I cannot find other than that saved policy 3.CO is a relevant policy for the supply of housing, and in the absence of a five year supply of deliverable housing sites must necessarily be considered out-of-date.

21. Indeed paragraph 33 of the *Hopkins Judgement* identifies that the concept of policies for the supply of housing extends to '*policies for the general protection of the countryside*'. Therefore similarly, although saved policy 18.CO applies generally in requiring that all development takes appropriate account of its surroundings, it inevitably bears on where housing may or may not be located, and must therefore likewise be considered a relevant policy for the supply of housing and consequently out-of-date.[10]

22. However paragraph 47 of the *Hopkins Judgement* explains that the weight to be accorded in decision-taking to policies for the supply of housing which are out-of-date is a matter of planning judgement. With this in mind it appeared to

[8] *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land* [2014] EWHC 573 (Admin).
[9] *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East, SSCLG*, reference [2016] EWCA Civ 168. The *Hopkins Judgement* also post-dates appeal Ref APP/W1715/A/14/2228566 which has been brought to my attention in this context.
[10] A different finding as was reached in appeal Ref APP/W1715/A/14/2219572, which has been brought to my attention, and which also pre-dates the *Hopkins Judgement*.

me from my site visit that the settlements of Chandler's Ford, Allbrook, Otterbourne Hill and Otterbourne fall within close proximity to one another and that the distinctiveness of each results to a greater or lesser degree from the presence of undeveloped land separating them.

23. This is particularly the case in respect of the undeveloped land between the properties comprising Otterbourne Hill and those of Allbrook: such land in my view contributes to the semi-rural character of these settlements, and mitigates the extent to which arterial traffic routes are apparent and visually connect separate settlements by virtue of their form and presence.

24. Moreover the Framework establishes that planning should take account of the different character of different areas, recognise the intrinsic character and beauty of the countryside and sets out that consideration should be given as to how development integrates into the natural and built environment. *The Planning Practice Guidance* (the 'Guidance') further indicates that the layout of areas, at a variety of scales, may be an important matter related to local distinctiveness.[11]

25. In this context the presence of natural space between Otterbourne Hill and settlements nearby is valuable in relation to the particular character and pattern of development of the area. It is therefore reasonable to find that the natural space in this particular location should be accorded some degree of protection in line with the approach in the Framework and the Guidance, and that conflict with policy 3.CO can as a consequence be accorded moderate weight. Policy 18.CO appears entirely consistent with the approach in the Framework and the Guidance, and is a generally stated policy rather than one with a specific geographic application, and consequently conflict with it can be accorded substantial weight.

26. The appellant has brought to my attention planning permission Ref APP/0/14/74849, where the Council permitted residential development within the same Local Gap as encompasses the appeal site. However that case and the proposal before me are not directly comparable given the scale of development proposed, the relationship of the relevant site to its surroundings, and indeed as that application site was included within the Council's *Strategic Housing Land Availability Assessment* as is not the case here.

27. The Council are further of the view that the location of the proposal is distant from nearby services and facilities, meaning that future occupants would be reliant upon the use of private vehicles in conflict with the encouragement given in the Framework to the use of sustainable modes of transport. However from my site visit it appeared that the area is comparatively well served by services and facilities catering for day-to-day needs which fall within a reasonably convenient walking distance including bus services, a post office, shops and a school.

28. Nevertheless for the above reasons I find that the location of the proposal is not appropriate, and as such it conflicts with the approach in saved policies

[11] In particular Reference ID: 26-024-20140306.

3.CO and 18.CO of the Local Plan, with policy S9 of the submitted plan, and with relevant elements of the Framework and the Guidance (the weight attached to this conflict tempered as set out above).

Character and appearance

29. There is some overlap in the Council's cited reasons for refusal in respect of the first main issue and this, the second. I have therefore confined consideration of this second main issue to the effect of the proposal on the character and appearance of the immediate vicinity rather than more strategic matters as considered previously.

30. Although there is some variety in the form and design of properties nearby, their prevailing scale is modest. Those facing Boyatt Crescent are typically single storey properties of understated modern design, whereas those to the east are generally older semi-detached two storey properties. Vehicular accesses and off-road parking, whilst commonplace, are predominantly individual to dwellings rather than shared. Substantial boundary features are typical with gardens generally located to the rear of properties. The modest, enclosed and individual nature of properties results in a consistent fine-grain pattern of development nearby.

31. Saved policy 59.BE of the Local Plan requires that development should integrate appropriately with its surroundings, taking account of the scale, layout, and density of the area. Similarly policy DM1 '*General criteria for new development*' of the submitted plan requires that development should take full and proper account of its surrounding context and suitably conserve landscape features of value.

32. The Framework likewise establishes that planning should recognise the intrinsic beauty of the countryside, and that it is appropriate to reinforce local distinctiveness. Although of some vintage, and whilst the weight that may be accorded to policy DM1 of the submitted plan must be tempered as set out in paragraph 7 above, it is nevertheless the case that saved policy 59.BE is broadly consistent with the approach in the Framework and can consequently be accorded substantial weight.[12]

33. It is important to note that appearance and landscaping are reserved, and as such the indications in these respects given by the appellant in the information before me cannot unduly influence my determination of the appeal. Nevertheless, as identified above, a significant element of bank of trees and vegetation marking the boundary between the appeal site and Boyatt Lane is proposed for removal to enable vehicular access to the appeal site.

34. Although vehicular accesses are commonplace, to achieve suitable visibility the Council explain that a 6.5 metre stretch of the bank of trees and vegetation would need to be removed. Such a wide opening would be uncharacteristic of those which are associated with surrounding properties, resulting in a greater

[12] With reference to paragraph 215 of the Framework. A similar finding as was reached in appeal Ref APP/W1715/A/14/2219572, though I have not been influenced by it as each proposal must be determined on its particular merits.

sense of openness than is typical nearby. In itself this access would erode the natural appearance of the appeal site, and would also enable clear views of the dwellings and the apron of associated hardsurfacing to the detriment of its present character.

35. I appreciate that the dwellings have been located to the rear of the appeal site in order to reduce their visual prominence. However this would be out of keeping with the prevailing arrangement of nearby properties within their plots by virtue of gardens falling to the front and side rather than to the rear. Furthermore, when viewed in conjunction with one another and their associated car ports, in my view the proposal would introduce a stark built form out of keeping with the massing and fine grain pattern of those nearby.

36. On this basis I therefore find that the proposal would adversely affect the character and appearance of the immediate area, both by consequence of its impact on a natural site and as a consequence of the access, layout and scale of the proposal appearing incongruous with reference to its surrounding context. The proposal therefore conflicts with the relevant provisions of saved policy 59.BE of the Local Plan, policy DM1 of the submitted plan, and with relevant elements of the Framework.

River Itchen SAC and ecology

37. Saved policy 25.NC of the Local Plan sets out that development which would adversely affect a habitat will not be permitted unless the benefits outweigh the adverse impacts, the adverse impacts are unavoidable, and appropriate mitigation or compensation measures are undertaken. Policy DM9 '*Nature conservation*' of the submitted plan establishes that development which is likely to adversely affect the integrity of environmentally sensitive locations will not be permitted. Paragraph 118 of the Framework similarly sets out that '*if significant harm resulting from a development cannot be avoided… adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused*'.

38. The Council's decision notice cited that at the time the application was made it was supported by insufficient to demonstrate that the proposal would not adversely affect the River Itchen SAC. A *Drainage Plan* and *Drainage Statement* are before me which provide further details as to run-off attenuation measures related to the development.[13] Subject to adherence to the approach in the former, the latter sets out that no adverse effects upon the River Itchen are foreseen.

39. There is correspondence before me from the Council to the appellant, dated 6 October 2016, which appears to concur with this assessment subject to the imposition of an associated condition. I am therefore satisfied on the basis of the information before me that, subject to suitable attenuation measures which could be secured via condition, the proposal would not result in unacceptable effects in respect of the River Itchen SAC.

[13] The *Drainage Plan* being drawing 4708/001 prepared by Bellamy Roberts LLP, dated 7 October 2015. The *Drainage Statement* likewise having been prepared by Bellamy Roberts LLP, is referenced as ITR/4827/DS.2, and is dated May 2016.

40. It is not disputed that the appeal site is close to the *Pitmore Copse Gully Site of Importance for Nature Conservation* and the *Lincolns Copse Site of Importance for Nature Conservation*, and that appropriate studies and measures are necessary to safeguard ecology. The dispute appears to be, in essence, over the comprehensiveness of the various studies before me in respect of identifying potential effects and mitigation measures. In this context Appendix 2 of the Council's appeal statement indicates that the proposal may, in their view, adversely affect dormice, reptiles and bats.[14]

41. There is an *Ecological Impact Assessment* before me which is stated to have been prepared in line with in line with relevant guidance including that of the Chartered Institute of Ecology and Environmental Management and of Natural England.[15] This sets out that subject to implementing the recommendations therein that '*no significant adverse effects on ecological resources*' would arise. This position is restated in subsequent correspondence from an ecological consultant,[16] and in an associated *Ecological Survey* which is also before me.[17]

42. Specifically the appellant has commissioned a *Report of dormouse nest search* which,[18] allied with the *Ecological Impact Assessment* indicates that although there may be dormice present within the surrounding woodland, there is no evidence of the presence of dormice within the hedgerow alongside Boyatt Lane. Whilst the report does not encompass the entire appeal site, it appears from the information before me that the proposal is not likely to entail significant harm to dormice, and in my view it would be possible as a consequence to overcome any potential harm in this respect through a suitably worded condition.

43. Similarly on the basis of the appellant's *Reptile Survey and Mitigation Strategy*,[19] it appears that the Council is satisfied that any associated mitigation to prevent adverse effects here could be secured by the imposition of a suitable condition as set out in paragraph 1.29 of Appendix 2 of the Council's appeal statement.

44. A *Note in relation to bat surveys* and subsequent *Bat Activity Survey* are before me.[20] Whilst the latter was prepared following the Council's decision notice, it was conducted at the invitation of the Council, who have had appropriate opportunity to comment upon it. The *Bat Activity Survey* anticipates that no significant effects on bats would result from the development. Notwithstanding the Council's concerns regarding the extent of surveys conducted, it appears, subject to the condition set out in paragraph 2.3 of Appendix 3 of their appeal

[14] It appears not to be disputed that there would be no likely adverse impacts on barn owls as a consequence of the *Report of barn owl box inspection*, undertaken by MD Ecology, reference C069/R3/v1, dated May 2016.
[15] *Elock's Paddock, Boyatt Lane, Eastleigh: Ecological Impact Assessment*, prepared by MD ecology, reference C069/R1/v1, dated August 2015.
[16] Correspondence from MD Ecology, dated 2 October 2015.
[17] *Phase 1 Ecology Survey* prepared by MD Ecology, dated August 2015, and an associated explanatory note of 2 October 2015.
[18] *Report of dormouse nest search*, prepared by MD Ecology, reference C069/R4/v1, dated May 2016.
[19] Prepared by MD Ecology, Ref C069/R2/v1, dated May 2016.
[20] *Note in relation to bat surveys*, undertaken by MD Ecology, dated May 2016, and *Bat Activity Survey*, ref C069/R5/v2 prepared by MD Ecology, dated September 2016.

statement that the Council are of the view that no significant adverse effects would arise in respect of bats, and I have no reason to disagree with this position.

45. Therefore on the balance of the evidence before me, and subject to suitable conditions, I conclude that the proposal would not be inappropriate in respect of its effects on the River Itchen SAC or in respect of ecology. Accordingly the proposal complies with the relevant provisions of saved policy 25.NC of the Local Plan, policy DM9 of the submitted plan, and with relevant elements of the Framework. However that the proposal would not be unacceptable in this respect does not outweigh the harm that I have identified would arise in respect of the first and second main issues.

Other Matters

46. The Framework sets out that there are three dimensions to sustainable development: economic, social and environmental, and that in order to achieve sustainable development gains in these areas should be sought jointly and simultaneously. The proposal would result in two new homes in an area with an acknowledged under-supply in line with the encouragement given in the Framework to boosting significantly the supply of housing.

47. However the benefit of the proposal in this respect would essentially be confined to a small numerical addition to housing stock rather in terms of quality for the reasons set out above. There would also be some social and economic benefits of the proposal in supporting employment during construction and as future occupants would make use of local services and facilities. Again, such benefits would be modest, and as a consequence do not carry substantial weight in its favour.

48. Several interested parties have commented on the planning history of the appeal site, namely unsuccessful application Ref Z/31511/001/00 and associated appeals Ref APP/W1715/A/94/237022 and APP/W1715/A/94/236214 determined in 1994. However the development proposed in that appeal is different to that which is before me, the policy context relevant in 1994 is significantly different to present, and in any event each proposal must be determined on its particular merits.

49. I note the concerns raised by nearby residents in respect of the potential effects of the proposal on highway safety, parking pressures, disturbance during construction, and in relation to safeguarding trees and other animals that may make use of the site. However these matters do not form part of the Council's case, and there is nothing in the evidence before me to lead me to find that there would be undue effects in these respects.

Planning Balance and Conclusion

50. The proposal would have some social and economic benefits and result in a small addition to housing delivery against a backdrop of undersupply. These benefits carry some weight in favour of the proposal, which I have furthermore found would not result in unacceptable effects to the River Itchen SAC or in

respect of ecology. However there would be adverse effects arising from the location of the development and its effect in respect of character and appearance, which in my view would significantly and demonstrably outweigh the modest benefits that would result.

51. I therefore find that the proposal conflicts with the approach in the Framework and with the development plan taken as a whole (the currency of which must be qualified as set out above). For these reasons, and taking all other matters raised in to account, I therefore find that the proposal does not represent sustainable development and that the appeal should be dismissed.

Thomas Bristow

INSPECTOR