
Appeal Decisions

Hearing held on 14 November 2017

Site visit made on 15 November 2017

by David Cliff BA Hons MSc MRTPI

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

Decision date: 11th January 2018

Appeal A Ref: APP/W1715/W/17/3173253

Land adjacent to 'The Mazels', Knowle Lane, Horton Heath, Southampton, Hampshire SO50 7DZ

- 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 Mrs D Emery against the decision of Eastleigh Borough Council.
 - The application Ref O/15/77465, dated 28 October 2014, was refused by notice dated 30 September 2016.
 - The development proposed is a development for up to 12 dwellings accessed off Knowle Lane with associated roads, parking and landscaping.
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Appeal B Ref: APP/W1715/W/17/3178540

Land adjacent to 'The Mazels', Knowle Lane, Horton Heath, Southampton, Hampshire SO50 7DZ

- 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 Mrs D Emery against the decision of Eastleigh Borough Council.
 - The application Ref O/17/79795, dated 29 December 2016, was refused by notice dated 5 April 2017.
 - The development proposed is a development for up to 4 dwellings accessed off Knowle Lane with associated roads, parking and landscaping.
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Decisions

1. Appeal A is dismissed and Appeal B is dismissed.

Application for costs

2. Applications for costs for both appeals were made by Mrs D Emery against Eastleigh Borough Council. These applications are the subject of separate Decisions.

Procedural Matters

3. Both applications are in outline with details of access to be considered in detail whilst appearance, landscaping, layout and scale are matters reserved for future consideration. I have treated the accompanying drawings showing layout, elevations and floor plans as being illustrative given such matters are reserved.
4. The appellant has submitted separate unilateral undertakings for both appeals A and B. These seek to address the reasons for refusal for Appeal A regarding

affordable housing and necessary infrastructure provision and also make provision for a new connecting footpath to be built linking the site with the existing footway on Knowle Lane. I will go on to consider these undertakings later in this decision.

Main Issues

5. For both appeals A and B the main issues are:

- Whether the Council is able to demonstrate a five year supply of housing land.
- The suitability of the location of the site for the proposed developments, having regard to the development strategy for the area and the effects upon the character and appearance of the area.

Reasons

Housing land supply

6. The Council says that it can demonstrate a housing land supply of 5.26 years as set out in the Eastleigh Borough Council Housing Land Supply Position Statement published in September 2017. This represents a change in circumstances from the position when the applications were determined.
7. In two recent appeal decisions at Bubb Lane, Hedge End¹ and Mallards Road, Bursledon² both Inspectors concluded that the Council was able to demonstrate a five year supply of deliverable sites.
8. Although not providing an alternative figure of the housing land supply position, the appellant has cast doubt on the Council's claim of a more than five year supply. The appellant draws attention to housing completions in recent years being well below the Council's forecasts and consequently expresses concern that the housing predictions over the next five years, and beyond, have no realistic prospect of being met.
9. It is clear that the Council has a history of being overly optimistic with housing delivery. However, based on the evidence before me and taking account of the previous Inspectors' findings in the recent decisions referred to above, I find there to be no clear basis to doubt that there is a reasonable prospect that the Council's forecast five year housing supply would be capable of being delivered.
10. The appellant also questions the differences between the deliverability assessments used in the Council's assessment of its five year housing supply and the longer term local plan housing trajectories. The Council explains that the two use different methodologies for different purposes. A similar issue was considered in a recent Court of Appeal judgment³ dated 20th October 2017 which both main parties had the opportunity to consider for the Hearing. Taking account of this judgment, particularly in relation to the distinction made between the delivery and deliverability of housing sites, I attach little weight to the appellant's concerns regarding housing trajectories and the Council's five year housing supply position.

¹ APP/W1715/W/16/3153928

² APP/W1715/W/16/3156702

³ St Modwen Developments Ltd and (1) Secretary of State for Communities and Local Government (2) East Riding of Yorkshire Council and Save Our Ferriby Action Group [2017] EWCA Civ 1643

11. In respect of other sites that are expected to come forward, including Pember's Hill Farm, there is a degree of uncertainty as is normally the case for proposed housing sites including market and other implications. However, there appears to be a realistic possibility from the evidence provided that they will be delivered within the necessary timescales.
12. The appellant draws attention to the possible implications of the work of the Partnership for Urban South Hampshire (PUSH) in respect of Eastleigh's housing supply. I concur with the conclusion of my colleague in determining the Bubb Lane appeal that considerable uncertainty remains around the timing and form of planning policies for its delivery. Given the further work to be undertaken on the emerging Local Plan, there is insufficient clarity as to the timing and form which the apportionment will take for it to be incorporated in the assessment of the housing supply requirement for the purposes of this appeal. It therefore carries little weight at this time on the five year housing supply issue.
13. The appellant has not provided any alternative assessment of housing land supply nor an indication of what any surplus, should there be any, would be. Whilst, I acknowledge the practical constraints of doing so for these appeals, there is no reasonable basis from the information submitted as part of these appeals, to consider that the Council is wrong in its current assessment of housing land supply.
14. Consequently, based on the evidence before me, I am satisfied that the Council is able to demonstrate a five year supply of deliverable housing sites. Therefore the provisions of paragraph 49 of the National Planning Policy Framework ('the Framework') in relation to policies for the supply of housing are not engaged in this case.

Planning policy matters

15. I have taken the same approach as the Bubb Lane and Mallards Road appeal Inspectors in finding that the Eastleigh Borough Local Plan Review 2001-2011 ('the Local Plan') is not out of date merely because it is, on the face of it, time elapsed. It is necessary to look at the policies contained within the plan, rather than to take the plan on its face. As the Inspector in Mallards Road found, the recent Supreme Court judgment⁴ does not give authority for time expired plans to be considered as automatically out of date. This is consistent with paragraph 215 of the Framework requiring that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
16. Policy 1.CO of the Local Plan states that planning permission will not be granted for development outside the urban edge except in certain circumstances, none of which apply to either of the proposed developments. The reason for the policy, as set out in the supporting text to the policy, is to protect the countryside, recognising its importance for many reasons including landscape value, providing a setting for towns and villages, and for its own sake.
17. Whilst policy 1.CO seeks to prevent residential development beyond the urban edge, it does not apply a blanket protection of the countryside as it allows for

⁴ Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37.

certain forms of development including those where there is a genuine need for a countryside location, albeit it is not quite as flexible as the approach set out in paragraph 28 of the Framework. Its aims are, however, broadly consistent with the fifth core planning principle of the Framework, recognising the intrinsic character and beauty of the countryside.

18. The current built-up area boundaries are somewhat dated in terms of how they relate to current housing requirements and policy 1.CO predates the Framework including its aim in paragraph 47 to boost significantly the supply of housing. It is apparent that the rigid application of policy 1.CO may not allow for the future housing development that is required. The Bubb Lane appeal decision recognised that there was a strong indication that the urban edges as currently defined are in need of review in the face of pressure to accommodate post 2011 development needs.
19. The emerging Local Plan is at an early state of preparation and so proposals in respect of the defined urban edges carry little weight at the present time. I am mindful that the Council is currently able to demonstrate a five year supply of housing, though there are most likely to be situations where development would be required outside of the existing built-up boundaries. The record of the implementation of the policy in practice indicates that it should not be considered as being up to date. However, this needs to be balanced against the countryside protection aim of the policy. Also, whilst it is apparent that some development needs to be permitted beyond the urban edge, this does not mean that all sites near to the urban edge would be suitable for residential development. Indeed it could well be the case that the sites that are suitable are the exception rather than the norm. Whilst the emerging local plan currently carries little weight, I note that the Council says that the existing settlement boundaries would be largely retained.
20. In this context, based on the evidence before me, I consider that whilst policy 1.CO should be considered as being out of date for the reasons set out above, any conflict with it should nevertheless still carry considerable weight. This approach broadly follows the approach of my colleague in the Bubb Lane decision. Whilst it differs from the approach of my colleague in Mallards Road, my reasoning is based on all the evidence and circumstances before me for these appeals. Therefore, the tilted balance in paragraph 14 of the Framework is applicable for this appeal.
21. I have also taken into consideration two appeal decisions⁵ provided by the appellant for two residential schemes outside of the Borough. In both cases the Inspectors found that the tilted balance in paragraph 14 of the Framework should apply due to out of date policies, irrespective of the housing supply position. My approach is generally consistent with these decisions in so far as policy 1.CO is not up to date. Whilst I go on to differ on my overall conclusions, including the weight to be given to the out of date policy, such conclusions are based on the particular circumstances and evidence relevant to the cases before me. I also note that both these other appeal schemes proposed a much larger number of dwellings, including a greater amount of affordable housing, which weighed significantly in favour of the schemes in the overall planning balance.

⁵ APP/P0240/W/16/3166033 & APP/F1610/W/17/3167827

22. Otherwise, I find policies 59.BE, 100.T and 102.T to be generally in accordance with the Framework and therefore any conflict with them would carry full weight.

Location of the site and the effect upon character and appearance

23. The site is located just outside of the urban area, approximately 1km from the centre of Fair Oak. An existing detached dwellinghouse (The Mazels), set within extensive gardens, is located immediately to the north of the site. A poultry farm is located on the opposite side of Knowle Lane to the west. An area of open space separates the site from Durley Road to the south. The Cockpit Farm with its associated buildings is located to the south east.
24. Located outside of the urban edge and therefore within a countryside location, the developments proposed in both appeals A and B would be contrary to policy 1.CO of the Local Plan. It would result in development that would not accord in principle with the countryside protection aims of this policy.
25. The supporting text to policy 1.CO sets out reasons why the countryside needs to be protected including to provide a setting for towns and villages and for its own sake. Local Plan Policy 59.BE sets out several design related criteria which need to be met by developments including that they take full and proper account of the context of the site including the character and appearance of the locality and that development adjacent to or within the urban edge must not have an adverse impact on the setting of the settlement in the surrounding countryside.
26. Although there is some existing built development along Knowle Lane outside of the urban edge, it is generally sporadic in nature and in distinct contrast to the more dense development within the built-up area to the south west of the site. Whilst the parties agree that the character of Knowle Lane is mixed, the stretch of Knowle Lane in the vicinity of the appeal site possesses predominantly rural rather than urban characteristics. The transformation from an urban to a predominantly rural character is particularly notable from the corner of Knowle Lane with Durley Road. The open appeal site makes a notable contribution to the rural countryside characteristics of the area outside of the more built up area.
27. Although layout and scale are matters reserved for future consideration, the appellant has provided illustrative drawings showing how both developments might be progressed. It seems clear to me that, whilst there may be other ways of developing the site than the layouts shown on the illustrative plans, it seems most likely to me that both schemes would result in a significant urbanising effect upon the site. The new dwellings themselves, along with any associated garages and hard surfaces would contribute significantly to this.
28. The urbanising effect of the proposals would also arise from the proposed vehicular access point for each development which I consider would be larger and of a more formal appearance than most of the other access points along this stretch of Knowle Lane, these generally being of a more informal appearance. The vehicular access point for both appeals would also draw the eye of passers-by into the site. Furthermore, the change to the character of the site would be exacerbated by the associated residential paraphernalia and parked cars that would be likely to occur within the site from both residential developments. The revisions made to the proposed footpath would reduce its

- prominence. I do not consider that this footpath would add significantly to the overall visual impact of either proposal. This does not, however, override my other concerns regarding visual impact.
29. The site has an important role to play in its contribution to the contrast between the built up area of Horton Heath and the predominantly undeveloped characteristics of the countryside beyond the urban edge. I acknowledge the limited zone of visual impact and that neither scheme would impact significantly upon longer distance views within the surrounding landscape and would not be detrimental to the wider landscape character. However, whilst existing boundary screening would be largely retained and there would be opportunity for further landscaping to be provided, I do not consider that this would successfully mitigate against the urbanising impacts of the proposed developments that would significantly compromise the role of the site in contributing to the distinction between the rural character of the countryside and the adjacent built-up area.
30. Although the urbanising effects of the 12 dwelling scheme (Appeal A) would be the most pronounced, those of the 4 dwelling scheme (Appeal B) would still be significant and harmful to the intrinsic quality of the countryside.
31. I have also considered other existing development beyond the urban edge. However, in the case of the poultry farm opposite, this is an appropriate and typical use within a countryside location possessing different characteristics to residential development. Other residential development on Knowle Lane outside of the settlement is generally more loose knit and more akin to the rural setting than the proposed developments illustratively shown in both appeals. Although the [Carnival Gardens] development is a larger residential development, the circumstances of its approval appear to be materially different to those of the appeals before me. The industrial estate on Knowle Lane impinges on the rural character in its vicinity, but this is an exception to the general character and has little effect upon the character in the immediate surrounds of the appeals site. I do not consider that such other developments, or the fact that policy 1.CO is out of date, should necessarily allow for developments of the form proposed in the countryside, given the resulting harm to its intrinsic quality that would almost certainly result. Each case needs to be considered on its merits.
32. The appellant also refers to a possible residential development site to the south west of Durley Road. Notwithstanding the limited weight that can be attached to the Small Sites Assessment given the early stage of preparation of the emerging Local Plan, this site immediately adjoins and appears to be more coherently related to the existing built-up settlement than the appeal site, which in contrast is more clearly separate from it. I have therefore given this only modest weight.
33. I find that both proposals would be harmful to the character and appearance of the area, contrary to the countryside protection and design aims of policies 1.CO and 59.BE of the Local Plan. The moderate visual harm arising from the proposed new access would also be contrary to Local Plan policy 102.T (ii) which seeks to ensure that development requiring new access does not have adverse environmental implications.
34. Before the hearing the Council confirmed that it raised no objection in respect of policy 18.CO of the Local Plan which relates to landscape character. I note

that there is some tension between the Council's confirmation in this respect and the other objections raised in relation to the protection of the countryside and character and appearance. In view of the Council's position in respect of policy 18.CO, I have not considered the proposal against it. Indeed, I have found no harm in terms of harm to wider landscape views. However, this does not change my conclusions expressed above in relation to the assessment of the proposals against policies 1.CO, 59.BE which are both clearly relevant, including with respect to the protection in principle of the countryside and the context of the site.

Other Matters

Accessibility to services and facilities

35. Although beyond the urban edge, the site is located within reasonable walking distance of several local facilities including a shop and schools. There is also a range of local facilities at the nearby Fair Oak village. The site is also within walking distance of a local bus service which connects with Bishops Waltham, Southampton and Eastleigh. For both appeals, the appellant has agreed to provide a new pedestrian footway leading from the site to the existing footpath on Knowle Lane. With the introduction of this footway, I consider that the site would enjoy reasonable access to facilities, services and employment, without the need to rely extensively on the use of the private car.
36. I therefore find that both proposals would satisfactorily accord with the relevant accessibility aims of policy 100.T of the Local Plan.

Other schemes

37. The appellant has drawn attention to the Council's recent approval of a residential scheme of four dwellings outside of the settlement boundary at 'Land rear of Watarah'. The Council at the time of the permission was satisfied it had a five year housing supply. However, the circumstances of that approval seem to be considerably different to the two appeal proposals before me. Whilst it did not accord with policy 1.CO, that site contains existing buildings and the Council considered that the proposed development would visually improve the appearance of the site and follow the prevailing low density pattern of development in the area. This is in contrast to the current appeal site which contains no existing buildings and where the proposed developments would result in a detrimental urbanising effect within the countryside. Furthermore, it is necessary for each case to be considered on its individual merits and particular circumstances. I have therefore attached only modest weight to this recent approval.
38. I have also considered other recent developments including the current residential development at the northern end of Knowle Lane (Carnival Gardens). However, the particular circumstances of such developments also do not appear to be the same as those of the appeals before me, including the fact that some of these developments were permitted in circumstances where the Council was unable to demonstrate a five year supply of housing land. The existence of such other permitted schemes does not therefore override my findings on the current appeal proposals.

Planning obligations

39. Planning obligations in the form of unilateral undertakings were submitted prior to the hearing. Following the hearing, a revised unilateral undertaking was submitted for appeal A. This includes provision for affordable housing, highway/footway works along with contributions towards transportation measures, open space, play provision, community infrastructure and public art. The unilateral undertaking for appeal A includes the provision of two of the proposed dwellings (one two bedroomed and one three bedroomed dwellinghouse) to be affordable. I go on to consider the benefit from the contribution towards affordable housing later in my 'planning balance below'. Otherwise, as the appeals are being dismissed for other reasons as set out below, there is no need for me to consider the S106 agreements in any further detail.

Emerging Local Plan

40. I have considered the emerging draft Eastleigh Local Plan. However, this is still at an early stage of preparation and is yet to be examined. I have therefore given its provisions only minimal weight at this time.

Planning Balance

41. Though the proposals would provide for new housing, the site is in a countryside location beyond the urban edge. I have found that the developments proposed both in Appeal A and B to be contrary to policies 1.CO, 59.BE and 102.T of the Local Plan. Whilst policy 1.CO is out of date, the conflict with it still carries considerable weight in the context of these appeals.
42. As policy 1.CO is out of date, the tilted balance set out in paragraph 14 of the Framework is applicable. Paragraph 14 states that where the development plan is 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 Framework taken as a whole, or there are specific policies in the Framework which indicate that development should be restricted. There are no specific policies in this case which indicate that development should be restricted.
43. The scheme proposed by appeal A would provide for 12 dwellings, making a moderate boost to the supply of housing within the Borough. This provision would include 2 affordable dwellings meeting an identified need. I have given this contribution moderate weight.
44. Appeal B would provide for 4 dwellings, again boosting the supply of housing although to a lesser extent than appeal A. I have given this lesser benefit more limited weight given the reduced number of dwellings proposed.
45. The appeals' site is in a reasonably accessible location, though this in itself carries neutral weight as it meets a policy requirement rather than being a significant benefit. The proposals would provide modest economic benefits from employment during construction and moderate economic benefits would result from future residents supporting existing shops and services in the area. The increase in residents would also make a small contribution to vitality of the local community. The buildings would be also be constructed to modern environmental standards, though this is a neutral factor in the planning balance

46. The Framework seeks to significantly boost the supply of housing. However, it is relevant that the Council is currently able to demonstrate a five year supply of housing land. Whilst its record of delivery in recent years has been below expectations, delivery of housing is not a matter for which the Council has full control as there may be other reasons outside of its control which prevent developments coming forward. However, the Council is currently able to show that housing needs in the next five years are reasonably capable of being met. As there is no insufficiency in supply, the weight attached to the proposals is less than would be the case should the Council have not been able to demonstrate a five year housing supply.
47. The site is located in the countryside beyond the urban edge. Whilst not significantly detrimental in wider landscape views, both proposals would result in a harmful urbanisation of the site, would impact detrimentally upon the immediate character and appearance of the area and would not protect the countryside. The Framework recognises the intrinsic character and beauty of the countryside.
48. The significant harm arising from built residential development within the countryside outside of the urban edge would significantly and demonstrably outweigh the benefits. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

49. Both the proposals would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, both appeals A and B should be dismissed.

David Cliff

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neil Holmes	Quayside Architects
Diane Emery	Appellant

FOR THE LOCAL PLANNING AUTHORITY

Luke Simpson	Adams Hendry
Laura Archer	Adams Hendry
Pete Errington	Planning Policy Team
Dave Foster	Planning and Litigation Lawyer

DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal Decision APP/P0240/W/16/3166033 (Land between Taylor's Road and Astwick Road north of 51 Astwick Road, Stotfold SG5 4AQ)
2. Signed Statement of Common Ground
3. Note confirming Neighbourhood Planning position

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Email dated 15th November 2017 from the LPA concerning Pembers Hill Farm application, and copy of email from appellant to LPA regarding the same.
2. Illustrative massing and composite elevations plan in respect of Appeal A (Drawing no. 991-MZ-P05A).
3. Email dated 17th November 2017 with details of CIL pooling.
4. Unilateral Undertaking (Appeal A) dated 22nd November 2017 along with accompanying documentation.
5. Copy of Ministerial Statement and letter from the Secretary of State dated 16th November 2017 regarding Local Plan intervention.