



Appeal Decision

Hearing held on 11 December 2024

Site visit made on 12 December 2024

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 December 2024

Appeal Ref: APP/W1715/W/24/3350858

Land off Cobbett Way, Botley, Hampshire SO30 2ET

- 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 The Trustees of The Mulberry Investment Pension Scheme against the decision of Eastleigh Borough Council.
 - The application reference is O/23/96432.
 - The development proposed is up to 34 dwellings and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters except access reserved for future consideration. A number of parameter plans were however submitted with the application. I share the Council's view that parameter plans are generally understood to set the broad limits within which the reserved matters will later be addressed. The appellant's submission of a revised indicative masterplan with the appeal which was inconsistent with the earlier parameter plans thus understandably drew objection from the Council. So too did the submission of revised parameter plans at a late stage in order to account for this. It is unlikely that all those consulted either in relation to the application or appeal have been made aware of the changes or had the opportunity to comment.
3. Despite the above, I am satisfied that the modifications do not result in any fundamental change to the scheme. Given the minor nature and extent of the differences it is therefore unlikely that the interests of any third party would be prejudiced were I to determine the appeal on the basis of the revised plans. Insofar as the parameter plans have been simply drawn to fit the revised indicative masterplan, it appears likely that the latter provides a reasonable guide to the scheme likely to be submitted in clearance of the reserved matters. It has therefore informed my assessment accordingly.
4. Following the submission of further information and a Section 106 Agreement (S106) during the appeal, the Council withdrew a number of its reasons for refusal. These related to drainage, impact on an adjoining priority habitat, and failure to provide required contributions, including towards habitats sites mitigation. The habitats sites and the related matter of drainage nonetheless require my further consideration below.

5. Following the Hearing a revised version of the National Planning Policy Framework (the Framework) was issued. I have taken any comments received from the main parties into account in my assessment below.

Main Issues

6. The main issues are:

- the effect of the development on the integrity of habitats sites; and
- whether the site is a suitable location for the proposed development having regard to its effect on the character and appearance of the area.

Reasons

Habitats sites

7. The site lies within the catchment of the Solent, which is covered by multiple habitats sites designations. Those identified by Natural England (NE) as directly relevant are the Solent and Southampton Water Special Protection Area (SPA) and Ramsar, the Solent Maritime Special Area of Conservation (SAC), and the Solent and Isle of Wight Lagoons SAC (collectively the 'Solent sites'). The proposed development would support an increase in population, giving rise to increased discharges of waste water, including through runoff, and a likely increase in use of the Solent sites for recreational purposes.
8. The site also lies within easy reach of the New Forest, which is also covered by habitats sites designations. Those identified as relevant by NE are the New Forest SPA, SAC and Ramsar (collectively the 'New Forest sites'). Again, the increase in population supported by the development would give rise to a likely increase in use of the New Forest sites for recreational purposes.
9. In view of the above, potentially significant in-combination effects on the integrity of both the Solent sites and New Forest sites cannot be excluded. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) an Appropriate Assessment (AA) is therefore required.
10. The Council has produced and supplied its own AA which concludes that no adverse effects on the integrity of habitats sites would arise. The sites included with the Council's AA are not however consistent with those identified by NE and listed above, and nor are they consistent with those identified in the reasons for refusal. The Council's AA was furthermore undertaken in advance of an objection to the scheme lodged by NE, and has thus failed to take it into account. Therefore, whilst the Council's AA provides useful background information for the purposes of my own AA, I cannot attach any weight to its conclusions.
11. The designation of both the Solent and New Forest sites relates to the priority habitats and species, including the range of birds, that they support. Where conservation objectives are available, they seek to maintain or restore integrity, including that of qualifying features. Increased discharge of nutrients in waste water would contribute towards harmful eutrophication within the Solent sites, and further harm would be caused by pollutants carried in runoff. Increased use of both the Solent sites and New Forest sites for recreational purposes would otherwise cause degradation and disturbance. All would be at odds with the conservation objectives.

12. In relation to the Solent sites, the Council's strategy for mitigation of recreational disturbance is set out within the Solent Recreation Mitigation Strategy 2017. This has been adopted by several Councils and was produced in cooperation with NE. Mitigation is achieved by the funding of Site Access Management and Monitoring measures (SAMMs) through developer contributions. A contribution has been secured by an obligation within the S106, which would necessarily be calculated at reserved matters stage.
13. In relation to nutrients, it has been established that the development could provide the necessary 3 forms of filtration for runoff subject to this being secured by condition. It is furthermore presumed that the 'mitigation package' secured by the S106 would offset nutrient discharge in wastewater through the purchase of credits in a Council run scheme. This scheme involves the removal of land from agricultural use, and is considered ecologically sound by NE.
14. In relation to recreational impacts on the New Forest sites, and in fulfilment of an intention set out within Policy DM11 of the Local Plan, the Council has adopted an Interim Mitigation Strategy (IMS). This collects developer contributions towards SAMMs within the New Forest sites, and the provision of Suitable Alternative Natural Green Space (SANGs) within the Borough. The IMS is intended to operate until an agreed strategic solution is developed. But though the IMS explains that it has been produced in response to NE objections, NE states that it has serious concerns, and that the IMS is not precautionary enough. In this regard NE identifies a significant level of uncertainty in relation to the IMS's effectiveness, including a lack of information regarding SANG capacity, and the lack of a monitoring strategy.
15. The main parties agree that the contribution secured within the S106 in accordance with the IMS resolves the Council's related reason for refusal. I have also been provided with a list of applications that the Council has approved in accordance with the IMS, despite NE's objections. Be that as it may, NE's objection carries significant weight, and though the Council states that it is currently working with NE to address its concerns, they remain unresolved. The Council's faith in the IMS does not in itself provide a cogent reason for me to depart from NE's advice. Based on the evidence before me it is not therefore possible to conclude beyond all reasonable scientific doubt that adverse effects on the integrity of the New Forest sites can be ruled out. Even in the unlikely event that there were no alternative solutions, no imperative reasons of overriding public interest would exist to permit the scheme in light of this finding.
16. Paragraph 193(a) of the Framework, states that planning permission should be refused if significant harm to biodiversity cannot be avoided, adequately mitigated, or as a last resort, compensated for. My findings above otherwise indicate that permitting the scheme would be contrary to the Habitats Regulations.
17. For the reasons set out above I conclude that the development would have an adverse effect on the integrity of the New Forest sites. It would therefore be in overall conflict with Policy DM11 of the Eastleigh Borough Local Plan 2022 (the Local Plan) insofar as this reiterates the requirements of the Habitats Regulations.

Character and appearance

(a) Background

18. Policy S2 of the Local Plan sets out a presumption in favour of new development within the Borough's main built-up areas, as defined by urban edges. As the site lies between the urban edges of Botley and Hedge End it is located within the countryside for the purposes of the Local Plan. Policy S5 of the Local Plan restricts development within the countryside to a range of types and uses, none of which would be delivered by the appeal scheme. The scheme would consequently conflict with Policy S5.
19. The site also lies within a designated settlement gap. Within this context Policy S6 of the Local Plan restricts development that would undermine the physical extent and/or visual separation of settlements, and that would have an urbanising effect detrimental to the character of the countryside, and the separate identities of the adjoining settlements.
20. The Local Plan explains that the restrictive nature of Policies S5 and S6 is principally to maintain the 'rural' character of the countryside. But the term is not included within the policy wording itself. The Local Plan also states that much of the countryside in Eastleigh has an urban-fringe character, with a large proportion of it used for recreational horse grazing. The Local Plan's reference to rural character can therefore only be properly understood contextually and in relative terms, which is logical when considering that a large proportion of the Borough is developed. Whilst there is nonetheless scope for qualitative variation in the character of land within the designated countryside, there is no indication within Policies S5 and S6 that land which is of urban-fringe character should be considered of lesser value. Indeed, to the extent that such land plays a role in helping to differentiate the character and identity of adjacent settlements, it forms a key component of the Borough's designated countryside.

(b) Assessment

21. The site is a paddock located just beyond the westernmost edge of Botley. It is grass covered and partly enclosed by a mix of hedges and woodland. Given its character, location, and current use for recreational horse grazing, the site forms a typical component of the Borough's countryside. Similar paddocks are located adjacent and are a frequent feature of the designated gap.
22. Broad Oak, the road located immediately towards the north of the site, provides the principal east-west link between Botley and Hedge End. Though only a short distance separates the 2 settlements they have a distinctly different character. Whilst Botley retains the identity of a small historic market town, Hedge End largely consists of a mass of modern suburban estate housing. This difference is underpinned by the continuing ability to perceive each as a physically separate place, notwithstanding the presence of development along Broad Oak.
23. Passing between the 2 settlements the continuity of development is broken by open and wooded gaps on both sides of the road. One of the most visually important of these gaps is formed by a combination of the site and the small piece of open land which links it to the street frontage. The loose ribbon of dwellings on the south side of Broad Oak can otherwise be readily distinguished

from the denser development which helps to define the adjacent settlement edges. The dwellings themselves are well spaced, allowing views through to the paddocks and wooded land beyond, including most of the appeal site. Viewed from Broad Oak, the fact that the site and adjacent paddocks contain equestrian paraphernalia does little to diminish their identity as fields, or the role that they together play in providing a small but important break between the built-up areas of the adjacent settlements.

24. Hedge End and the south western periphery of Botley are also partly connected by The Bridleway, an east-west rough surfaced lane which runs roughly parallel to Broad Oak towards the south of the site. The site is separated from The Bridleway by a belt of woodland. Though this is likely to provide a visual barrier during the summer months, during the winter the site is clearly visible, and presumably remains so year-round viewed through a gap cut to accommodate overhead power lines.
25. Entering The Bridleway from Hedge End the edge of the built-up area is clearly apparent, and views are available across the same open spaces visible from Broad Oak. Though much of The Bridleway has a cluttered and unkempt appearance, it is clearly distinct in character from adjoining suburban development in Hedge End. Travelling east, the increasingly open and undeveloped setting otherwise provides a sense of movement towards and transition into the more open countryside. The site plays a positive role in informing this sense of transition, in relation to which both its physical linkage to the broader landscape, and the contrasting character of the built-up edge of Botley are each appreciable. This accentuates the site's value as a component of both the designated gap and the countryside when considered in the round.
26. The appeal scheme would see the site covered by housing and what would inevitably be a series of subordinate open spaces. The development would be clearly visible from both Broad Oak and The Bridleway regardless of the way in which the site was landscaped, and would appreciably extend well beyond the urban edge of Botley. This would have a transformative effect on the character of the site and its relationship with adjacent development. In its urbanised state, the site would no longer play any meaningful role in breaking the continuity of development along Broad Oak, or helping to physically and visually differentiate Botley from Hedge End. It would also undermine both the sense of transition experienced along The Bridleway, and the linkage this provides to the broader open countryside. The appeal scheme would as such have an acutely harmful effect on the character and appearance of the area, eroding the separate identities of Hedge End and Botley, and compromising the character of the designated countryside. Clear conflict would thus arise with Policy S6 of the Local Plan as set out above.
27. The revised masterplan and parameters plans have sought to show how a visual link could be maintained between Broad Oak and the woodland to the south, and how some space could be retained to the rear of the existing gap on the street frontage. However, these measures would be of very limited value and effect. The visual corridor shown would be narrow, enclosed by housing and appreciable only from fixed points, whilst the space close to the frontage would be viewed entirely within the foreground of dwellings. It would not therefore retain any sense of the existing break. Neither measure would successfully mitigate the harm identified above, and nor is it apparent that any potential to do so would exist within the scope of the reserved matters.

28. It has been additionally suggested that the development could provide an improved landscaped edge to Botley. This would in effect involve planting adjacent to the existing hedge which encloses the west side of the site. But though the existing urban edge as defined by the rear boundaries of dwellings on Cobbett Way is abrupt, it is also distinct. When set within the context of my assessment and the harm identified above, it is hard to see what benefit the proposed landscaped edge would deliver.
29. For the reasons outlined above I conclude the site is an inappropriate location for the development given the adverse effect it would have upon the character and appearance of the area. Whilst conflict with Policies S5 and S6 of the Local Plan has been established above, the scheme would also conflict with Policy S1 of the Local Plan insofar as this seeks to meet community needs without compromising the identity of individual settlements, and Policy DM1 of the Local Plan insofar as this seeks to secure development that would not have an unacceptable impact on the character and appearance of the countryside.

Other Considerations

30. The appeal scheme would conflict with the development plan taken as a whole. Though the Council's lack of a demonstrable 5-year supply of deliverable housing sites (5YHLS) nonetheless means that the policies most important for determining the application are deemed 'out-of-date', the Local Plan is less than 3 years old. In this regard, notwithstanding changes to national policy during this period, I am satisfied that the policies with which I have identified a conflict remain consistent with the Framework. The identified policy conflicts thus attract substantial weight. When assessed against the policies within the Framework itself, my findings in relation to habitats sites otherwise provide a strong reason for refusing planning permission. As such the so-called tilted balance is not applicable.
31. The development would provide up to 34 dwellings, 35% of which would be affordable. The scale of the related social and economic benefits would be relatively small. Here I am mindful of the renewed emphasis placed on housing delivery at national level, and the local need for affordable housing. But regardless of whether the 5YHLS lies at 4.42 years as was claimed by the Council, 2.67 years as is claimed by the appellant, or somewhere in between, these benefits are incapable of outweighing the environmental harm that I have identified above. This is because the appeal scheme's conflict with the Habitats Regulations alone means that it cannot be lawfully permitted.

Conclusion

32. For the reasons set out above the effects of the development would be unacceptable, giving rise to conflict with the development plan taken as a whole. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR

APPEARANCES

For the Appellant

Clare Brockhurst	(Landscape) Leyton Place Landscape Planning
Andrew Burgess	(Planning) Andrew Burgess Planning
Jon Goodall	(Housing Supply) Strategic Planning Research Unit
Matthew Henderson	(Counsel for the appellant) Landmark Chambers
Rob Lowe	(Drainage) Jubb
Louisa Standbrook- Jones	(Ecology) Pro Vision

For the Local Planning Authority

Rebecca Altman (Planning)	Eastleigh Borough Council
James Ansell	(Housing Supply) Hampshire County Council
Tim Dyer	(Character and appearance) Eastleigh Borough Council
Rachael Morris (Planning)	Eastleigh Borough Council

Interested parties

Stephen Wildin	Botley Parish Councillor
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