



Appeal Decision

Hearing Held on 26 September 2017

Site visit made on 26 September 2017

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

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

Decision date: 29 September 2017

Appeal Ref: APP/B1740/W/16/3164266

Land north of Loperwood Lane, Calmore, Totton, SO40 2RL

- 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 Howard Sharp & Partners LLP against the decision of New Forest District Council.
 - The application ref. 15/11797, dated 18 December 2015, was refused by notice dated 11 August 2016.
 - The development proposed is described as: up to 80 dwellings; open space; drainage.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 80 dwellings with open space and drainage on land north of Loperwood Lane, Calmore, Totton in accordance with the terms of the application, ref. 15/11797, dated 18 December 2015, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The application form indicates that the proposal was made in outline with all matters of detail reserved for future determination. Nevertheless, the appellant confirms that it is intended that the development would proceed broadly in accordance with the parameters set out in a number of indicative drawings and supporting reports. These are listed in condition nos. 5 and 6 below and I afford them considerable weight in this decision.

Background and Planning Policy Context

3. The appeal site is a gently sloping field, currently in use as pasture, on the northern edge of Totton. The site is bounded by hedgerows and a number of mature trees, some of which are protected by a Tree Preservation Order. It is therefore generally well-screened, particularly in views from the nearby Totton bypass (the A326), which runs broadly parallel to the site's western boundary, and the lane (Loperwood) to the north of the site. To the east, the site is adjoined by residential development and a playing field. To the south, the site is backed onto by gardens of properties on Calmore Road, with further dwellings including the grade II listed Calmore Cottage on the opposite side of Loperwood Lane. A bridleway runs between the appeal site and the bypass. A number of trees and a small pond, lacking significant standing water at the time of my site visit, lie towards the centre of the site.

4. Notwithstanding its refusal of planning permission for the appeal development, the Council now offers no evidence to support its refusal reasons. Three of these reasons relate to matters that are addressed by the submitted Section 106 agreement, which is considered later in this decision. I discuss the remaining matter, which relates to planning policy, below. The Council raises no objections in respect of other issues such as landscape impact, character and appearance or the effect on the above-noted listed building.
5. The appeal site lies outside the settlement boundary for Totton. As such, the proposal would conflict with relevant Local Plan policies, notably policy DM20 of the New Forest District (outside the National Park) Local Plan part 2: Sites and Development Management (adopted 2014) (the 'Local Plan part 2'), which resist development in the countryside. This is the substance of the Council's first refusal reason.
6. In the light of the Supreme Court's decision in ***Suffolk Coastal DC v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East BC [2017] UKSC 37***, it is now common ground that these policies do not amount to policies for the supply of housing in the terms of paragraph 49 of the National Planning Policy Framework (the Framework). Nevertheless, the Council accepts that it cannot demonstrate a five year land supply, as is required by paragraph 49. Indeed, it accepted at the hearing that the scale of the housing shortfall is acute. I have no reason to disagree. As such, it is common ground between the main parties that the 'tilted balance' set out in the second part of the Framework's paragraph 14 is engaged. This states that 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. Bearing that in mind, the Council now considers that planning permission could now reasonably be granted for the appeal scheme.
7. The Council advises that a version of the emerging Local Plan that includes the appeal site as part of a larger allocation of land for housing to the north of Totton has recently been considered by relevant committees. It anticipates that this allocation will be carried forward into a submission draft of the emerging Local Plan, which will be subject to public consultation following its final approval – expected in December 2017. Nevertheless, given the stage that the emerging Local Plan has presently reached, I can afford this draft proposal little weight. The Council clarified at the hearing that this matter has not affected its present stance in respect of this appeal.

Consideration

8. Following the withdrawal of the Council's objections, it is clear that there are no outstanding matters of difference regarding the substance of the proposal between the two main parties. A number of representors also support the scheme. However, there is significant local opposition to the development and, in that context, other parties have raised a number of detailed objections.
9. Although access is a reserved matter, the agreed development parameters propose that there would be a single vehicular access at the southern end of the site onto Loperwood Lane. Although a cul-de-sac, this is a relatively wide road by residential standards (some 7.3 metres) that was previously a through route until blocked by the Totton bypass. Loperwood Lane has a junction with Calmore Road, which provides links to the wider road network.

10. The appellant has submitted a Transport Assessment (TA), which considers the impact of the development based upon an earlier proposal for 100 dwellings. It concludes that the scheme would result in a relatively low number of vehicle movements to and from the site during peak periods (using the TRICS methodology). It also notes that an analysis of accidents has indicated no significant concerns for road safety in the last five years. Hampshire County Council (HCC) as the local highway authority has no objections to the proposal. No objections have been received from the relevant emergency services in respect of the site's access arrangements.
11. Local residents do not accept the TA's findings. In particular, concern is raised that the relevant traffic surveys took place in June 2014. It is argued that they do not therefore represent an up-to-date picture of traffic movements in the light of more recent developments in the locality. It is also felt that the extra traffic that would be generated by the appeal scheme could not be safely or sustainably accommodated on the local road network.
12. While I appreciate these concerns, they are not supported by the technical evidence that is before me. The TA presents future baseline traffic flows at 2019, which include some allowance for housing growth in the Totton area after the 2014 survey date. The traffic impact resulting from a 100 unit scheme, assessed as a maximum increase of some 14% in the AM peak period on Calmore Road north of the Loperwood Lane junction, would not represent a substantial change from the baseline projection. Importantly, the resulting figure would remain well below the road's practical link capacity. I therefore share the appellant's view that such a change would be unlikely to result in materially adverse effects on congestion, highway safety or environmental factors. Furthermore, as already noted, the scale of the appeal scheme has been reduced since the TA was prepared. I therefore have no substantive reason to depart from the TA's broad conclusions or the view of the local highway authority on this matter.
13. Flood risk is clearly a significant concern to many local residents. Although risk of fluvial flooding is low (the site lies within flood zone 1 – the lowest risk – on the relevant flood maps), residents of Calmore Road report persistent problems in the site's vicinity.
14. Given that the appeal site is separated from Calmore Road by the playing field and other properties, it is unclear to what degree run-off from the site itself contributes to such problems. Nevertheless, it is understandable that concerns have been raised about the implications of introducing built development onto what is presently a greenfield site. The appellant has submitted a Flood Risk Assessment (FRA) which sets out the broad principles for the appeal scheme's drainage arrangements. In respect of surface water, this envisages a sustainable drainage solution being put in place that would comprise on-site attenuation, among other features, to be secured by a planning condition. The FRA concludes that this would provide a quantifiable reduction in downstream flood risk. I have seen no substantive evidence to the contrary. Subject to the implementation of such a scheme, I am satisfied that the proposed development would not worsen existing conditions. Indeed, on the evidence before me it would be likely to provide an improvement.
15. Concern has also been raised that approval of the present proposal would be premature given that the emerging Local Plan has yet to be finalised.

However, while the Framework supports a plan-led approach, the national Planning Practice Guidance (PPG) advises¹ that in the context of the Framework, and in particular the presumption in favour of sustainable development, arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. It adds that such circumstances are likely, but not exclusively, to be limited to situations where both (a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan and (b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area. In the present case, and irrespective of the degree of progress with the emerging Local Plan, I agree with the Council that the appeal scheme is not of a sufficient scale to prejudice the plan-making process. A delay on grounds of prematurity is not therefore justified.

16. At the time that the planning application was considered by the Council, HCC as local education authority requested a payment towards an expansion project in the Totton area to mitigate the impact of the development on educational infrastructure. However, this contribution has not been carried forward into the submitted Section 106 agreement. At the hearing, the District Council stated that it considered that this contribution had not been adequately justified in line with the Community Infrastructure Levy (CIL) Regulations 2010. I have seen no substantive evidence to cause me to take a different view. While concerns are also raised about the scheme's impact upon medical facilities, I am not aware of any objection in that regard by relevant providers.
17. The appeal scheme is accompanied by an updated Design and Access Statement that indicates that a significant part of the site would comprise green infrastructure. I share the Council's view that the scheme would have the capacity to be an attractive development, appropriate to its rural edge location. Provision would be made for public open space in line with relevant policy requirements, along with Suitable Alternative Natural Green Space (SANGS) to provide mitigation in respect of recreational impacts on nearby sites of international nature conservation importance. In that context, the Council has adopted the Shadow Appropriate Assessment prepared by the appellant and I take a similar view. The resulting provision, which is secured by the submitted Section 106 agreement, allows for some overlap between SANGS and other open space provision. Natural England has confirmed that it has no objections to this approach. I have no reason to disagree.

Planning Obligations

18. A Section 106 agreement dated 25 September 2017 was tabled at the hearing. As already noted, this secures the provision of open space and SANGS and makes allowance for the future use and ownership of the land concerned. It also secures the payment of relevant contributions towards maintenance of the open space, children's play area and SANGS, along with a SANGS monitoring

¹ PPG reference ID: 21b-014-20140306.

contribution. These provisions satisfy relevant development plan policies, notably policy DM3 of the Local Plan part 2, and supplementary guidance.

19. The agreement also secures the provision of 50% of the final number of dwellings as affordable housing, with a tenure mix of 70% social rented and 30% intermediate housing. This would be in line with policy CS15 of the New Forest District outside the National Park Core Strategy.
20. Taking these matters together, I am satisfied that these obligations accord with the requirements of CIL Regulation 122.

Conclusion

21. For the above reasons, I consider that although the proposal would conflict with relevant Local Plan policies, it would not result in adverse effects that would be sufficient to significantly and demonstrably outweigh the scheme's clear benefits – notably the provision of much needed housing, including affordable housing. I therefore conclude that the appeal proposal would amount to sustainable development in the terms of the Framework. Notwithstanding the level of local opposition to the scheme, I consider that the particular circumstances that I have described are sufficient to over-ride the above-noted policy conflict in this instance.

Conditions

22. The main parties have submitted an agreed list of conditions. I have considered, and where necessary amended, these in the light of national policy guidance and the discussion at the hearing. It is necessary that the development should be carried out in accordance with the approved red-line plan as this provides certainty. It is common ground that the scheme should broadly accord with the parameters set out in various supporting plans and documents: a condition is required to secure this. However, given that a separate condition is needed, for highway safety reasons, in order to secure the site's access arrangements, the inclusion of access details within condition no. 5 would amount to unnecessary duplication. For a similar reason, it is not necessary to include the Noise Impact Assessment in condition no. 5.
23. Tree protection and biodiversity mitigation and enhancement measures are needed in order to safeguard trees within the site and ensure that the scheme does not adversely affect the site's ecology. Given the site's relationship to the Totton bypass, appropriate noise mitigation measures are required. As already discussed it is necessary that adequate drainage measures are put in place. In order to safeguard the living conditions of nearby residents, it is necessary that a construction method statement is approved and implemented. However, given that this requires measures to control dust emission, the suggested additional condition in respect of dust assessment is unnecessary.
24. Given the site's potential, albeit low, to contain archaeological assets, it is necessary to ensure that appropriate investigations are secured. It is also necessary to ensure that any land contamination is investigated and, if found to be present, remediated.

Overall Conclusion

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

Schedule of Conditions

- 1) Details of the layout, scale, appearance, access and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with approved drawing no. HSP/0001 Rev 1.
- 5) The development shall comprise no more than 80 dwellings and the details to be submitted in accordance with condition no. 1 above shall be broadly in accordance with the following plans, strategies and recommended mitigation measures:
 - Site layout discussion drawing no. 160209 SK1 Rev D;
 - Landscape strategy drawing no. 1616 1002;
 - SANGS enhancement plan (6 June 2016);
 - Storey heights drawing no. 160209 SH Rev A;
 - Storyboard ref. 160209 SB Rev A;
 - Design and Access Statement Version 2 (June 2016); and
 - SANGS Creation and Management Plan (May 2016).
- 6) The position of the vehicular access to the site shall be limited to that shown on drawing no. 16168-03 (David Tucker Associates) dated June 2016. Details of the access including necessary sight lines shall be submitted for the approval of the local planning authority in accordance with condition no. 1. Development shall accord with the approved details.
- 7) No development, demolition or site clearance shall take place until measures for the protection of trees and hedges on the site as identified for protection in the submitted Tree Survey, Arboricultural Impact Assessment and Tree Protection Plan (December 2015) ref. AR/30114 (The Mayhew Consultancy) have been submitted to and approved in writing by the local planning authority. The approved measures shall be carried out in full prior to any development, demolition or site clearance and shall remain in place for the duration of the construction period.
- 8) No development shall take place until a biodiversity mitigation and enhancement scheme has been submitted to and approved in writing by the local planning authority. The details shall accord with the recommendations set out at section 7 of the Ecological Assessment by Ecosupport Limited dated December 2015 and shall include the following:

- provision of six bat boxes and four bird boxes;
- the provision of native and nectar-rich plant species;
- the enhancement of boundary hedging and the pond area; and
- the retention of deadwood stumps.

Development shall accord with the approved details.

- 9) Notwithstanding the proposals in the Noise Impact Assessment ref: R5459-1 Rev 2 dated 25 May 2016 (24 Acoustics) no development shall take place until a scheme for protecting the proposed dwellings and their gardens from traffic noise has been submitted to and approved in writing by the local planning authority. Mitigation measures shall be based on the principles of the Noise Impact Assessment and shall include appropriate standards of double glazing, alternative means of ventilation and close boarded timber fencing for dwellings likely to be adversely affected by noise. The dwellings shall not be built otherwise than in accordance with the approved details.
- 10) No development shall take place until a drainage strategy detailing the proposed means of foul and surface water disposal and an implementation timetable has been submitted to and approved in writing by the local planning authority. The strategy shall be based on the principles set out in the Flood Risk Assessment ref. AAC5174 dated 11 December 2015 (RPS) and, in particular, shall accord with the principles of sustainable drainage. The development shall be carried out in accordance with the approved details and timetable.
- 11) No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall include measures to bring into effect the recommendations at section 7.2 of the Ecological Assessment by Ecosupport Limited dated December 2015 including restrictions on the timing of clearance and construction works as recommended and shall also provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction; and
 - a scheme for the recycling or disposing of waste resulting from demolition and construction works.
- 12) No development shall take place until a programme of archaeological work has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local

planning authority. The results of the archaeological work shall be made available to the local planning authority before any development begins.

- 13) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

M J Hetherington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr R Wickham MA FRICS MRTPI	Howard Sharp & Partners
Mr J Harbottle MA MRTPI MRICS	Howard Sharp & Partners
Mr T Hutchinson MA MRTPI	Howard Sharp & Partners

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Straw MA MRTPI	New Forest District Council
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INTERESTED PERSONS:

Mr D McKeigue	Open Sight
Mr A Thorburn	Trustee, Open Sight
Ms D Andrews	Former local resident
Ms B Underhill	Local resident
Mr J Freeman	Local resident
Mr G Dart	Local resident
Councillor N Penman	Local councillor
Councillor D Harrison	Local councillor
Mr P Kelly	Local resident
Ms A Almond	Local resident

DOCUMENTS TABLED AT THE HEARING

Document 1:	Letter from Natural England to New Forest District Council dated 28 June 2016
Document 2:	Section 106 agreement dated 25 September 2017.