



Appeal Decision

Site visit made on 3 October 2024

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th March 2025

Appeal Ref: APP/C1760/W/23/3328784

Former North Hill Sawmill Yard, Baddesley Road, Chandlers Ford, SO52 9BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval of details required by a condition of an outline planning permission.
 - The appeal is made by Mr Parkhurst of Senior Living (Chandler's Ford) Ltd against the decision of Test Valley Borough Council.
 - The application Ref 21/02697/RESS sought approval of details pursuant to condition No.2 of outline planning permission Ref 17/01615/OUTS, granted on 27 September 2018.
 - The application was refused by notice dated 2 May 2023.
 - The development proposed was described as 'Outline application for demolition of existing industrial buildings and re-development to form a Care Village (use class C2), comprising 2-3 storey care home building/community hub containing up to either 65 no. care beds or up to 48 no. "extra care" units and core facilities: a series of 2- 2.5 storey buildings containing up to 101 no.1 and 2 bedroom "extra care" units; single vehicular access from Baddesley Road (including retained access to North Hill Cottage and Wheelhouse Park); associated car and cycle parking spaces; provision of associated outdoor amenity space; provision of semi-natural "ecological" buffer zone and grassland; proposed new landscaping/tree planting; provision of on-site drainage; and undergrounding of existing over-head electricity lines. New barn store/offices for Wheelhouse Park (Class B8/B1- "sui generis")
 - The matters for which approval is sought are: appearance, landscaping and layout.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal a new National Planning Policy Framework has been published (the Framework). The policies which are the most relevant to the appeal have not been subject to any substantial changes and I am satisfied that the main parties have not been prejudiced by my taking it into account.
3. The appeal is accompanied by a Unilateral Undertaking dated 27 March 2024 (the UU) which relates to mitigation for effects on designated habitat sites. This has been taken into account in the determination of the appeal.

Background

4. In September 2018 outline planning permission was granted by the Council for the development described in the banner heading above¹ ('the original permission'). That permission included matters of access and scale, and was granted subject to a number of planning conditions. Condition 2 of the original permission required subsequent approval of matters of layout, appearance and landscaping ('the reserved matters').
5. Phase 1 of the development comprised the main access road, 'village centre' with core facilities and 48 extra care units, as well as a block containing 9 extra care units, with parking and associated landscaping. The reserved matters for those parts of the development were approved in March 2020² and that part of the development is now underway with parts substantially complete.
6. Phases 2 and 3 relate to the remaining parts of the site. An application for the reserved matters of layout, appearance and landscaping for these phases was submitted to the Council in September 2021³. Following amendments made during the course of the application, these phases comprised 91 extra care units and associated development. The Council refused the application for those reserved matters on 2 May 2023, and that refusal is the subject of this appeal. Accordingly, the considerations of this appeal are limited to this matter.
7. Concerns have been raised regarding the consistency of the appeal scheme with the original permission. Due to changes in the ground levels on the site, the proposed buildings would be higher than may have been expected at the time of the original permission. Nonetheless, given the proposed buildings would comprise two storeys I do not find that the proposal would conflict with the parameters of the original permission and I have continued with the assessment of the appeal on this basis.

Main Issues

8. The main issues are the effects of the proposal on:
 - the living conditions of occupants of properties on Flexford Close, and;
 - designated habitat sites.

Reasons

Living Conditions

9. The appeal site lies on higher ground than Flexford Close to the east and is separated by a belt of trees and shrubs which follow the line of Monk's Brook which defines the appeal site's eastern boundary. While the ground level is largely consistent across much of the appeal site, it slopes steeply downwards towards the eastern boundary and the Brook.
10. Flexford Close comprises relatively dense residential development, comprising groups of properties of similar scale and design, but with variations in their brick tones. Many have received extensions and alterations, and the majority have open front boundaries including off street parking areas combined with

¹ Reference 17/01615/OUTS

² Phase 1 Reserved Matters 20/00488/RESS

³ Phases 2 and 3 Reserved Matters 21/02697/RESS

areas of soft landscaping, giving a degree of uniformity and openness to its character. The eastern side of Flexford Close comprises predominately detached properties on higher ground, and there are branches which extend from it to the west, and slightly downhill towards the appeal site. These branches of Flexford Close comprise groups of short terraces and semi-detached properties, set perpendicular to the main part of Flexford Close. The most western properties on Flexford Close, which include no.21 and 55, have their side elevations facing the appeal site and their private rear gardens extend parallel to the boundary.

11. The trees and shrubs adjoining the Brook provide a pleasant and verdant backdrop to Flexford Close. While those trees include some tall conifers, there are also deciduous trees on the boundary and natural gaps where there is a greater degree of intervisibility between the appeal site and Flexford Close. The tree belt together with the absence of development on the appeal site, contribute to the feelings of openness from Flexford Close and the gardens closest to the appeal site.
12. Condition 4 of the original planning permission required that the development be carried out in accordance with the parameter plan BRS.2581_38 Rev.B, which demonstrated the building heights and main landscape features of the development. This demonstrates that areas of the development closest to its eastern side would be 2 storeys in height. Ground levels on the site have also been raised and as a consequence the height of the development would rise notably above the height of those properties on the lowest ground in Flexford Close.
13. The proposed development closest to the eastern boundary would be divided into a number of blocks, separated by areas of soft landscaping and parking, which would break up the mass of the development and provide some visual relief. Block 7 would be located closest to the side wall of no.21 Flexford Close and the distance of separation between them would be approximately 18.5m, using the Council's figures. Block 7 would comprise an irregular shape where the elevation closest to no.21 would be two storeys with a pitched roof form which would slope away from the boundary, as well as a smaller gable feature. No balconies are proposed to this far east elevation, but a window is proposed on each floor to provide a secondary source of light and outlook to habitable rooms.
14. Block 9, situated further to the north along the eastern boundary, would be a wider, more rectangular block, with a longer rear elevation facing towards the side elevation of no.55 Flexford Close. The east facing elevation of Block 9 would include windows across two floors, including projecting windows set within gable features, but also first floor windows set partially within a lowered eaves level and within a roofslope which slopes away from the boundary. Again using the Council's figures, there would be a minimum distance of 19.6m separating Block 9 from the side of no.55 Flexford Close.
15. The properties on Flexford Close closest to the appeal site are orientated to have their main direction of outlook from windows to the front and rear. This includes numbers 21 and 55 which are among the closest to the proposed development. While the development would be visible in the outlook from the windows of those properties, this would mainly be at oblique angles from the main windows. In combination with the separation distances given above, it

would not appear unacceptably overbearing in the outlook from the rooms of those properties.

16. The proposed development would be more prominent from the private gardens of those properties closest to the site. However, those rear gardens are enclosed primarily by other residential gardens and the surrounding two storey properties. Again, given these characteristics, together with the distance of separation between the gardens and the proposal, the effects on those gardens would not be unacceptable.
17. There is not substantive evidence to demonstrate that properties on Flexford Close would experience a harmful reduction of natural lighting or significant overshadowing as a result of the development. I observed during my site visit that views are possible from the appeal site down towards many properties on Flexford Close. However, while there would be some intervisibility, given the distances involved together with the position of existing and proposed windows and balconies and intervening landscaping over time, a harmful loss of privacy would not occur. While I do not find the maintenance of acceptable living conditions on Flexford Close to be reliant on proposed screening, the open space and foliage surrounding the Brook would nonetheless assist in providing a buffer and feeling of separation between Flexford Close and the development, helping to soften its visual effects in the outlook from those properties and gardens.
18. In conclusion on this main issue, while there would be some effects on the living conditions of occupants of properties on Flexford Close, I do not find those effects would amount to unacceptable harm. The proposal would be acceptable in terms of its effects on existing living conditions and would comply with Policy LHW4 of the Test Valley Local Plan 2016 (the LP) as well as the objectives of the Framework insofar as they relate to healthy living conditions and amenity.

Habitat Sites

19. The Solent and Southampton Water Special Protection Area (SPA) and Ramsar Site lies 8.7km to the south of the appeal site. The SPA designation covers an area of 5,401ha of estuarine habitat along the Southampton Water coastline. The Ramsar designation occupies 5,415ha. The SPA is designated for its waterbird assemblage and the presence in particular of qualifying populations of nine species which are listed on Annex 1 of the Birds Directive. These include the Black-tailed Godwit, Common Tern, Dark-bellied Brent Goose, Little Tern, Mediterranean Gull, Ringed plover, Roseate Tern, Sandwich Tern and Eurasian Teal. The conservation objectives for the SPA are: the maintenance or restoration of site integrity, and of the extent, distribution, structure, and function of the habitats of qualifying species, the supporting processes on which those habitats rely, the respective populations of the qualifying species, and their distribution within the site.
20. The Ramsar site is designated on the basis of four qualifying criteria which are met by the distinctive biogenetic characteristics of Southampton Water, and the presence of an important assemblage of rare plants and invertebrates; an internationally important waterfowl assemblage; and qualifying populations of Black-tailed Godwit, Dark-bellied Brent Goose and Eurasian Teal.

21. These habitats can be sensitive to water quality changes arising from increased levels of nutrient nitrogen input generated by new development, both directly, through wastewater contributions, and indirectly as a result of the effects of land use change on diffuse pollution. Annex 1 bird species can be sensitive to water quality related changes to the condition, structure, and function of supporting habitats. The appellant refers to the Solent Site Improvement Plan, which identifies sensitivities of qualifying coastal habitat types and bird species to the effects of water pollution, including the formation of dense microalgal mats as a result of eutrophication of the water environment, and excessive levels of nutrient nitrogen. This is supported by the advice of Natural England, that there are high levels of nitrogen and phosphorus input into the water environment of the Solent region caused by wastewater from existing housing and agricultural sources, and that these nutrients are causing eutrophication at these designated habitat sites. Given the site's proximity to these designated sites, a likely significant effect from the development proposal cannot be ruled out.
22. In addition, the River Itchen Special Area of Conservation (SAC) lies 3.7km to the east of the site and has a qualifying habitat of water courses of plain to montane levels with the Ranunculion fluitans and Callitriche-Batrachion vegetation, which support specific species. The conservation objectives for this SAC are the maintenance or restoration of site integrity, and achieving the favourable conservation status of its qualifying features by means of maintaining or restoring the extent, distribution, structure and function of the qualifying habitats and the habitats of qualifying species, supporting the processes on which these habitats rely and the respective populations of the qualifying species, and their distribution within the site.
23. Based on the evidence, the proposed development would be within the operational catchment of the Itchen and would be served by the Chickenhall Wastewater treatment works, which discharges into the River Itchen SAC. Similarly, through introducing additional residents and wastewater, the proposal would present a likely significant effect on the River Itchen SAC through contributing to the nutrient load.
24. Insofar as the effects on both the Solent sites and the Itchen River SAC are concerned, the appellant has identified nutrient budgets for nitrogen and phosphorus, each including a 20% buffer, and acknowledges that mitigation through nutrient neutrality is required. I have no strong reason to doubt the figures provided, given the justification supporting the methodology and I note those figures are not in dispute between the main parties. The appellant's finding that mitigation is required for both nitrogen and phosphorous effects is consistent with the comments of Natural England received during the course of the appeal.

Mitigation

25. The Council report a strategic approach to mitigation, which is administered by Eastleigh Borough Council. It reports that in the case of both nitrogen and phosphate mitigation, this entails the stopping of agricultural uses of over 238 hectares of land which, through direct purchase, Eastleigh Borough Council are able to ensure that agricultural activity and associated generation of nutrient loading are reduced. The Council refer to a particular example at Roke Manor Farm, which is able to offer 2522 nitrate credits. These reductions are

subsequently offered to developers as credits to offset the impacts arising from development. While administered by a different Council to that within which the appeal site lies, the mitigation applies to the same river catchment areas. As such offsetting using agricultural land would still benefit the same designated sites impacted by the appeal scheme. It is apparent, therefore, that cross-boundary co-operation with neighbouring authorities is necessary to ensure this type of mitigation would be delivered, monitored and enforced if necessary. Accordingly, the Council refer to powers under Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, which would allow sharing of enforcement and monitoring of strategic mitigation schemes. I am satisfied that, subject to securing such mitigation, the favourable conservation status of the habitat and species which comprise the qualifying features of the habitat sites would be maintained and would not be further degraded or impeded from achieving a favourable conservation status.

26. The submitted UU would require the developer to enter into an agreement with relevant listed authorities for the purchase of nitrate and phosphate credits and which identifies parcels of land within the administrative area of Eastleigh Borough Council that are no longer used for farming practices. It also allows for the use of another such agreement if otherwise agreed by the Council. The UU refers to a nitrate offset target of 178.7 kg/TN/yr, and a phosphate offset target of 3.49kg/yr, which is consistent with the findings of the appellant's report⁴ which utilises the budget calculator.
27. The appellant has evidenced emails with officers at Eastleigh Borough Council regarding the purchase of credits under the relevant mitigation schemes. These relate to both phosphate credits and nitrate credits separately. This suggests that both schemes had adequate nutrient credit capacity at that time and I note in both cases the relevant authority required confirmation of planning permission being granted before the purchases could proceed. Based on the information before me, I am satisfied that there was an appropriate scheme which had sufficient credits available to purchase at the time the appeal was made.
28. However, importantly, the Council report that such a Section 33 agreement has yet to be completed with Eastleigh Borough Council in respect of the required phosphate offsetting. As above, the evidence suggests that such an agreement is necessary for the delivery, monitoring and enforcement of such credits. In the absence of the agreement for phosphate offsetting, based on the information before me, it is not possible to establish with certainty that there would be appropriate provisions in place to secure the necessary mitigation. While the Council report that the agreement will be completed shortly, its report to the planning committee of 25 April 2023 similarly referred to the agreement being completed shortly, and this adds to the uncertainty as to how far away such an agreement may be, or what form it may take.
29. Given the importance of this issue, together with the lack of certainty as to whether it could be delivered within the timescale of the permission, I do not consider that the use of a Grampian condition would be suitable for this purpose. The UU includes a provision for a combination of mitigation to be provided through both purchase of credits and the implementation of physical and/or management measures on land to achieve the requisite targets.

⁴ Information for Habitats Regulations Assessment 15 June 2022

However there is insufficient information before me to demonstrate what those may be, or whether they would be sufficient to mitigate the effects of the proposal should mitigation for phosphates via Eastleigh Borough Council not be possible.

30. Based on the information before me, the proposal would have a likely significant effect on the Solent and River Itchen designated habitat sites, and, adopting a precautionary approach, I cannot be satisfied that appropriate mitigation in terms of phosphates could reasonably be secured for the effects on the River Itchen SAC. Accordingly, it is not possible to rule out the possibility that the proposal, either alone or in combination with other development, would have an adverse effect on the integrity of the protected site. No alternative solution, overriding public interest, or compensatory measures have been put forward. Consequently, having regard to the Habitats Regulations, permission should not be granted.
31. The proposal would conflict with Policy E5 of the LP which sets out criteria for development likely to result in the loss, deterioration or harm to habitats of importance to biodiversity. It would also conflict with the objectives of the Framework insofar as it relates to habitat sites.
32. Insofar as this main issue is concerned, I do not find conflict with Policy COM2 of the LP, which contains the settlement hierarchy for the focus of new development in the Borough. I note the Council accept this policy was cited in error.

Planning Balance

33. During the course of the appeal the Council have confirmed that it is no longer able to demonstrate a five year land supply for housing. The provisions of paragraph 11d) of the Framework are therefore relevant to the appeal. However, the application of policies in the Framework insofar as they protect habitat sites provide a strong reason for refusing the development proposed. This is reiterated by paragraph 195 of the Framework and as such, the proposal would not benefit from the presumption in favour of sustainable development set out in the Framework.
34. Nonetheless, there are a number of clear benefits which would arise if the reserved matters were approved. In particular this would include the delivery of the new homes of the original planning permission, specifically tailored to cater for older people. This is particularly important given the undersupply of land for homes in the Borough and the acknowledged undersupply of homes of this particular type. There would also be economic benefits arising from the construction process and from ongoing expenditure into the local economy by future occupants and their families. There would also be some benefit arising from the renewal of landscaping and associated onsite biodiversity enhancements which would be delivered as part of the scheme. While acknowledging these benefits, they do not amount to material considerations of sufficient weight to outweigh the conflict found with the development plan.

Other Matters

35. In addition to those discussed above, the proposal has the ability to have effects on other designated habitat sites. This includes the Emer Bog SAC, New Forest SAC, SPA and Ramsar Site, as well as the Trodds Copse Site of

Special Scientific Interest. However, Regulation 63(1) of the Habitats Regulations indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As the appeal is being dismissed on other grounds it is not therefore necessary to address the effects on these additional sites in any further detail.

36. I note the issues raised by interested parties and their concerns for the proposed development. However, I have not addressed those further, since they would not alter the outcome of the appeal.

Conclusion

37. The proposal would conflict with the development plan and there are not material considerations of sufficient weight which indicate that a decision should be made other than in accordance with it.

C Shearing

INSPECTOR