The Planning Inspectorate

Appeal Decision

Site visit made on 1 May 2012

by Mike Robins MSc BSc(Hons) MRTPI

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

Decision date: 3 July 2012

Appeal Ref: APP/X1735/A/11/2167404
Land to rear of 41-55 Frogmore Lane, Waterlooville, Hampshire PO8 9QN

- 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 Hood House Ltd against the decision of Havant Borough Council.
- The application Ref APP/11/00204, dated 24 February 2011, was refused by notice dated 23 June 2011.
- The development proposed is six houses and eight flats.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Hood House Ltd against Havant Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The proposal is in outline with the matters of access, appearance, layout and scale to be determined at this stage. Landscaping is therefore reserved for future determination.

4. A Unilateral Undertaking, partially signed and dated 11 April 2012, was submitted by the appellant under the provisions of the Town and Country Planning Act 1990. This was to address contributions sought by the Council with regard to play space and transport infrastructure. I deal with this later in my decision.

5. The National Planning Policy Framework (the Framework) was published on 27 March 2012. It reaffirms at paragraph 2 the statutory duty to determine planning applications and appeals in accordance with the development plan unless material considerations indicate otherwise. The Council's decision referred to policies of the Havant Borough Core Strategy (CS) which forms part of the development plan and also to national policy in Planning Policy Statements, now superseded by the Framework. The Framework is a material consideration and both main parties were given opportunity to comment on its relevance. This appeal decision, which is based on the up-to-date policy position, takes account of the submissions received.

6. The appellant has suggested that the Council's reasons for refusal 4 and 5, relating to contributions to play space and transport infrastructure, were flawed and should be treated as withdrawn. This is argued on the basis of there being erroneous references to PPGs 7 and 17. The Council have acknowledged this

as an error, and while I deal with this matter in the costs decision it is necessary to also address it here. The Council have provided evidence that the correct policies were presented to the Planning Committee and the appellant but that the errors were introduced when drafting the Decision notice.

7. I am satisfied that although the wrong national documents were referred to, the development plan policies were correctly stated, and the reasons were clear and unambiguous in the matters they addressed. The appellant would have been in no doubt of the Council's concerns and had every opportunity to address these concerns in their submissions to this appeal. I can see that no prejudice has arisen to the appellant and I have treated these reasons for refusal as valid elements of the Council's case.

Main Issues

8. There are four main issues in this case: firstly, the effect of the proposal on the character and appearance of the area; secondly the effect on the living conditions of the occupiers of neighbouring dwellings, with particular regard to visual impact, privacy, noise and disturbance; thirdly, whether the proposal makes reasonable provision to mitigate its impact on infrastructure and services in accordance with adopted policies; and fourthly, whether the proposal should make provision for affordable housing.

Reasons

9. The appeal site encompasses parts of the rear garden areas of a row of bungalows which front onto Frogmore Lane. It is located to the northern boundary of the urban area of Waterlooville, as defined by the Spatial Distribution Map that accompanies Policy CS17 of the Core Strategy. It is in a predominantly residential area. While there is a range of housing type and sizes across the area, bungalows and relatively modest two-storey properties predominate near to the site, although this character has been altered through the recent construction of flats at the junction of Frogmore Lane and Ash Copse, and a row of houses and flats constructed to the rear of the adjoining bungalows along Frogmore Lane, in a new development known as Willowside.

10. The appeal site would take its access off Willowside and would represent an extension of this development providing housing in three semi-detached units and two blocks each containing four flats. These would be of similar size, appearance and layout to Willowside.

Character and Appearance

11. The Willowside development was granted permission by the Council following an appeal decision[1] which, although it went against the initial proposal, indicated its acceptability in principle. The appellant relies on this as regards the acceptability of the development before me in terms of the character and appearance of the area. The proposal is further promoted as a sustainable one strongly supported by the Ministerial Written Statement of 23 March 2011 entitled 'Planning for Growth' and the recently introduced Framework. The appellant suggests that the proposal complies with the strategic principles set out by the Council of, amongst other things, concentrating growth in Waterlooville.

[1] APP/X1735/A/06/2027237

12. In contrast the Council highlight the scale, height, massing and density of the development which they cite as being at odds with the prevailing character of the area. They note that there have been changes to national policy as well as the development plan since the previous permission for Willowside.

13. Frogmore Lane runs along a shallow valley feature with the land rising up to the west and east. The area is by no means dominated by frontage development with incursions off Frogmore Lane at Cricket Drive and Rose Hill to the east, and Youells Lane leading to Youells Crescent and Lensyd Gardens to the west. The properties along Frogmore Lane are low-level, two-storey houses or bungalows and most have reasonably long front gardens with further planting and grass verges to the road. As a result the area has an open, suburban character. Densities are relatively low for the properties to the west but higher within the areas to the south and east of the site.

14. There is no question that the development at Willowside has altered the character here, and it has established a prominent line of development to the rear of Frogmore Lane. It is very visible from dwellings to the east and through gaps in the houses along the road, as well as those on Lensyd Gardens and Youells Crescent to the rear. This new proposal would consist of buildings of some height and massing with additional accommodation incorporated within the roof spaces. The buildings would have limited separation, with gaps of only 1m between houses and 2m between the blocks of flats.

15. It would extend the visually prominent development at Willowside across a much larger part of the area in a combined scheme that would dominate the low-level development along Frogmore Road and materially alter the character. On balance I consider that it would significantly urbanise the area with buildings which would contrast with the predominant form and type locally.

16. I acknowledge that Willowside was accepted in principle, however, in addition to their in combination effect, there are two material differences between the schemes. Firstly Willowside was developed as a spur off Ash Copse where the only close relationship was with No 29 Lensyd Gardens, the other properties retreating rapidly from the boundary as a result of the layout here. Consequently there was reasonable separation and density across the wider site.

17. In contrast this extended scheme pushes further into the backland of the Frogmore Lane properties where it would be surrounded by dwellings to the side and rear on Youells Lane and Youells Crescent. This tighter relationship would result in higher perceived densities and increased urbanisation of the area. Furthermore the increased length of the overall development with its limited spacing would emphasise the contrast with the rhythm and grain of properties along Frogmore Lane. In this the site also differs from that considered under appeal at 25 and 27 Frogmore Lane[2] .

18. Secondly, the appeal decision taken in 2007 predated the current national and local planning policy frameworks. While the drive for more efficient use of land remains, it is somewhat tempered by the removal of minimum density standards and the definition of gardens as previously developed land. It has been acknowledged that gardens contribute, in some cases, to the character of the area. Initially set out in Planning Policy Statement 3 'Housing' (PPS3), the

[2] APP/X1735/A/08/2062239

redefinition of residential gardens as greenfield land rather than previously developed land, has been carried forward into the Framework Glossary at Annex 2. As I and other Inspectors[3] have found, neither the former PPS3 nor the Framework preclude housing development on garden land. However, any positive weight that arose from it being considered as previously developed has gone. The Framework provides at paragraph 53 that it is for local planning authorities to consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

19. Core Strategy Policy CS17 supports the more effective use of land and looks to concentrate development in the five main urban centres, including Waterlooville. However, it also seeks to prioritise development of previously developed land. While I accept that the site is a sustainable one and that there is a demand for new housing across the area, it must be considered against the wider policies of the plan. In this case I do not consider that the benefits outweigh the harm to the character and appearance of the area that would arise from the increased urbanisation and visual intrusion of this proposal and it would conflict with Policies CS9 and CS16 in this regard. These policies seek to ensure that proposals achieve a suitable density of development for the location and respond to and draw inspiration from the local context using characteristics of the locality to inform its design, including height and massing.

Living Conditions

20. The rear of the flat blocks particularly would face out towards the rear gardens and elevations of the properties, Nos 8-14, on Youells Crescent. While Core Strategy Policy CS16 seeks to ensure that development does not cause unacceptable harm to the amenity of neighbours, it is informed by the Council's Supplementary Planning Document (SPD) – *Design Guide*, adopted 2011.

21. This sets out minimum back to back separation distances and garden depths, to protect residents from overlooking and overbearing development. In both cases the proposal would comply. This is, however, finely balanced in this case as, despite slightly lower ground levels, the proposed flat blocks would be substantial units which would have main living areas at first floor looking out towards the relatively small gardens and the rear windows of the existing properties on Youells Crescent. The SPD acknowledges the need to consider internal layouts to address overlooking, and in this case I consider that this relationship would be harmful.

22. The scale and massing of the proposal would remove the existing open views over the valley, and I sympathise with the occupants over this aspect. However, the planning system does not exist to protect such private interests. I note the Council's concerns about increased noise and disturbance and it appears that each flat would have a subdivided area of open space to the rear. I do not, however, consider that this would represent a significant level of harm to the neighbouring occupiers. Nonetheless I conclude that there would be some harm to the living conditions of the occupiers of the properties on Youells Crescent with regard to loss of privacy, albeit this could be partly addressed in final landscaping proposals. While the harm may not be sufficient on its own to justify dismissal of this appeal, it does conflict with Policy CS16 and adds weight to my earlier concerns.

[3] APP/A1720/A/10/2131269

Infrastructure Contributions

23. The Council raised specific reasons for refusal in relation to the appellant's failure to secure contributions for transport and public open space improvements. I note the appellant considered that the Council did not provide them with clarification of the amounts required, nor comments on their draft undertaking. On submission of an undertaking to this appeal they questioned whether the contributions were necessary. I have considered these in light of paragraph 204 of the Framework and the statutory tests introduced by Regulation 122 of The Community Infrastructure Levy (CIL) Regulations, 2010.

24. In accordance with Havant Borough District Wide Local Plan, (the Local Plan) Policy R17 and Core Strategy Policies CS21 and CS1, the Supplementary Planning Guidance – *Provision and Improvement of Playing Space for New Housing Development,* and Hampshire Country Council's Transport Contributions Policy document, the Council requires the reasonable cost of meeting the additional demand for infrastructure and services arising from the proposed development to be met by contributions from the developer. The Council has specified the required amounts towards transport facilities and public open space and identified the sites and purposes to which the contributions would be put, including cycle ways and improvements to the Waterlooville and Cowplain Recreation Grounds.

25. The appellant argues, with reference to a previous appeal decision[4], that there is insufficient information to comply with the tests of Regulation 122 of the CIL Regulations. This appeal, however, related to a different Council and nature of development and I have limited information on the level of evidence supplied. In this case I am satisfied that the contributions sought are fairly and reasonably related to the scale of the development and would meet the necessary tests.

26. The appellant has provided a dated Unilateral Undertaking which proffers the required contributions. However, the Undertaking is incomplete as not all persons or organisations with an interest in the land appear to have signed the document. Furthermore, there are corrections within the document that have not been witnessed. Overall I consider that there is limited weight that can be placed on this undertaking, except to note that the outcome is generally in accordance with the Council's figures in respect of the contributions.

27. In absence of a completed undertaking the proposal fails to comply with Local Plan Policy R17 and Core Strategy Policies CS21 and CS1 in this regard. These policies seek to ensure development creates new open spaces that contribute to the borough's green infrastructure, and specifically the provision of new or improved infrastructure.

Affordable Housing

28. The Council seek on average 30-40% provision of affordable housing, as contributions or on-site provision, in developments of between four and fifteen houses as set out in the Core Strategy Policy CS9. In this case the appellant has submitted a viability assessment the conclusions of which indicate that there is no opportunity for an affordable housing element within the scheme. The Council have challenged some of the assumptions and figures put forward.

[4] APP/A1720/A/10/2141763

29. The use of a transparent approach to viability is necessary in this case and while it is noted that the appellant's advisor on viability attempted to discuss the matter with the Council, there does not appear to have been any discussion or agreement on the approach. The Homes and Community Agency approved Economic Appraisal Toolkit, (EAT), was used, and while this has been superseded, it is nonetheless a reasonable approach to consider viability, dependant on the assumptions and inputs used. The EAT output suggested that were 35% affordable homes to be considered, there would be a resulting negative land valuation. When assessed with no affordable element there would be a residual land value close to the existing use value of the site.

30. This would suggest that the site would be unable to support an affordable housing contribution, but I note that the Council consider that the suggested open market values are lower than they would expect and not based on new build values. They do not, however, present any evidence on values or an alternative approach to the valuation. The appellant has submitted details of valuations from an estate agent and from a development consultancy. On the evidence before me I conclude that the scheme would not conflict with Core Strategy Policy CS9 as regards the provision of affordable homes.

Conclusion

31. Although benefits would arise from this proposal as regards housing in a sustainable area, and there is an element of precedent supported by Willowside, there are material differences, and the impacts arising from the in combination and the individual effect of this proposal would harm the character and appearance of the area. Furthermore additional weight against the proposal comes from the relationship with the neighbouring dwellings and the lack of a completed undertaking securing contributions for transport and public open space.

32. Although the Framework sets out a presumption in favour of sustainable development, this amounts to more than just providing houses in a location with good sustainable transport links and access to facilities. The Framework also seeks the delivery of a high quality built environment that meets the wider needs of a community. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Mike Robins

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 1 May 2012

by Mike Robins MSc BSc(Hons) MRTPI

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

Decision date: 3 July 2012

Costs application in relation to Appeal Ref: APP/X1735/A/11/2167404
Land to rear of 41-55-Frogmore Lane, Waterlooville, Hampshire PO8 9QN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Hood House Ltd for a full award of costs against Havant Borough Council.
- The appeal was against the refusal of planning permission for six houses and eight flats.

Decision

1. The application for an award of costs is refused.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. This appeal relates to an application for new dwellings to be located on garden land in a similar form and layout to a neighbouring scheme, Willowside, previously approved in 2008. The Council's reason for refusal referred to the proposal as being out of character and visually dominant, harmful to the living conditions of occupants of neighbouring dwellings and failing to address affordable housing and additional infrastructure demands.

4. The appellant submitted a costs application in writing citing paragraphs B16 and B29 of the Circular. In this it was suggested that the Council were misled in their approach in favouring their Urban Design Officer's views over those expressed in previous appeal decisions, and that they deliberately ignored their own Design Guide which supported the scheme. Furthermore it was suggested that the erroneous references to PPGs 7 and 17 in the Decision Notice should have led to withdrawal of those reasons for refusal.

5. The Council's written response maintained that the Urban Design Officer's comments were set out in a Planning Officer's report which included full details on the site's history and the previous appeal. They suggested that there was full opportunity for the appellant and objectors to put forward their cases and for the Committee Members to consider the application following a visit to the site. As such I do not consider that they would have been misled by one consultee's response and were in full possession of the facts of the case.

6. The Council further pointed out that the relevant Supplementary Planning Document – *Design Guide,* (the SPD), had only been adopted some time after the planning decision was made, and that they fully accepted their drafting

error on the Decision Notice, but noted that the correct version had initially been provided to the appellant and to Members.

7. In my own assessment of this case I found material differences between the previously approved scheme at Willowside and the new proposal, as well as significant differences in planning policy. These matters, in relation to both character and appearance and the living conditions of neighbouring occupiers, were properly set out in the Council's reports and in their statement to this appeal. On the evidence before me I did not find undue reliance placed on the Urban Design Officer's position and consider that the Members were aware of the planning history of the neighbouring site. I further note that they carried out a site visit and consider that they were entitled to take the decision they reached.

8. The Circular sets out in paragraph B18 that where the outcome of an appeal turns on an assessment involving matters of judgement, such as those concerning character and appearance or living conditions, it is unlikely that costs will be awarded.

9. Turning to the matter of the SPD, as this was only adopted in December 2011, some six months after the Council decision on this scheme, it would have carried only limited weight at best. Nonetheless I note that the Officer's report clearly set out the separation distances, and acknowledged the previous Inspectors' decision, drawing out differences between the schemes.

10. While I do consider that the Council could have referred more explicitly to the SPD in their statement, the separation distances in this document are minimum standards and it acknowledges that internal layouts are an important consideration. The Council concerns were clearly stated and no unnecessary costs have arisen to the appellant in their need to address this matter, particularly in light of the strength of local resident's concerns.

11. Finally I turn to the matter of the errors in the decision notice. While the incorrect references to PPGs 7 and 17 were unfortunate they would not have led to any prejudice to the appellant in terms of their understanding of the Council's concerns. That these were genuine errors is borne out by the fact that the correct references were included in an earlier version of the decision notice. The matter of contributions would still have had to be addressed and no unnecessary costs were caused as a result of this.

12. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.

Mike Robins

INSPECTOR