



## Appeal Decision

Hearing held on 9 June 2022

Site visit made on 9 June 2022

**by Mr R Walker BA HONS DIPTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 July 2022**

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**Appeal Ref: APP/W1715/W/21/3283337**

**Land south of Snakemoor Lane, east of Winchester Road (Denhams Corner), Eastleigh**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Jaci Properties Ltd against the decision of Eastleigh Borough Council.
  - The application Ref F/20/87925, dated 29 May 2020, was refused by notice dated 22 March 2021.
  - The development proposed is construction of five adaptable dwellings for disabled persons/inter-generational families with widened vehicular access from Snakemoor Lane, new pedestrian access from Winchester Road, with land available for strategic Denhams Corner roundabout improvement scheme.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made at the hearing by Jaci Properties Ltd against Eastleigh Borough Council. This application is the subject of a separate decision.

### Preliminary Matters

3. Since the submission of the appeal the Council has adopted the Eastleigh Borough Local Plan (LP) (2022) which has replaced the saved policies of the Eastleigh Borough Local Plan Review (2001 - 2011). Moreover, Natural England (NE) has updated its advice on nutrient level pollution in several river basin catchments, including the Solent Complex of European designated sites (SPA, SAC and Ramsar) (Solent). In addition, NE updated its advice in relation to recreational disturbance from new residential development on the New Forest European designated sites (SPA, SAC and Ramsar) (New Forest).
4. The main parties commented on the implications of these matters prior to the Hearing. Accordingly, a Unilateral Undertaking (UU), pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) was submitted prior to the hearing. Moreover, the Council confirmed that it no longer wished to defend reason 2 of its refusal decision notice. This related to the effects of the proposal on the Solent and New Forest, in respect of recreational disturbance but also nitrogen loading, in the case of the Solent. As I am the competent decision-

making authority, the Council's updated position does not alter my duties under the Habitat Regulations<sup>1</sup>.

5. I have also been referred to the Botley Neighbourhood Plan (NP) and the Parish Council advised that the Pre-Submission (Regulation 14) NP is currently being prepared in readiness for consultation. Since it has not been made and could be subject to change I give it limited weight.

### **Main Issues**

6. Accordingly, the main issues are:

- whether the proposed development would be in a suitable location having regard to the spatial strategy for the Borough;
- the effect of the proposal on the character and appearance of the surrounding area; and
- whether there are material considerations sufficient to outweigh any harm or policy conflicts identified in relation to the first two main issues.

### **Reasons**

#### *Location*

7. The appeal site is a paddock used for the keeping of horses and chickens, located on a corner by a roundabout along the B354. It lies to the south of Horton Heath but outside of its (and any other settlement's) built-up area boundary as defined in the LP. This means that the site is treated as countryside for the purposes of applying the relevant development plan policies.
8. As there is low density housing in either direction along this part of the B354, the term "countryside" is not a particularly apt description. Instead, it denotes that the site is not within a town or village identified as part of the settlement strategy in the LP. New development in the countryside is permitted where it is related to specific forms of development as set down in Strategic Policy S5 of the LP. These include, amongst other things, rural workers dwellings' and limited residential conversions. The proposal would not accord with any of these listed forms of development.
9. In the Borough, growth can take place in accordance with Strategic Policies S1, S2 and S3 and the settlement hierarchy set out in Table 1 of the LP. Horton Heath is identified as a level 4 settlement in the hierarchy. These are defined as other settlements with a more limited range of services and facilities, although there is a recognition in the LP that Horton Heath's position in the hierarchy will be affected by development planned or under construction.
10. There are some opportunities to walk, cycle and utilise public transport from the appeal site. To access Horton Heath along the footway by the B354, future occupiers would need to cross two roads at the roundabout. Moreover, to reach the nearest bus stops future occupiers would also need to crossover at the roundabout. My observations at my site visit represented a snapshot in time. However, even with the improvements proposed, the speed and busy nature of the roads and the roundabout, with vehicles using the roundabout accelerating,

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<sup>1</sup> The Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations)

braking, and exiting at different points necessitates an increased attention when crossing.

11. There is no firm evidence when, or if, the strategic footpath/cycleway/bridleway proposed in the LP will be delivered. The existing footway to Horton Heath is not particularly wide on the western side of the B354, is not consistently lit and the surfacing is uneven in places. The combination of these features, and my concerns regarding crossing at the roundabout, is such, that this would not be an attractive route for future occupiers, including wheelchair users to take.
12. I recognise that Policy S2 of the LP does not say that other areas, outside of the defined main built-up areas, are not sustainable. Moreover, the site is not 'isolated' in the context of paragraph 80 of the National Planning Policy Framework (the Framework).
13. I accept that there is, more generally, an increasing use of online services, and some occupiers may cycle along the roads. However, given my findings regarding the attractiveness of the routes I consider that future occupiers would still have a high dependency on private motor vehicles to access services and facilities.
14. This would be at odds with the provisions of criterion e) of Policy S1 of the LP. This stipulates, amongst other things, that to be sustainable, new development in the Borough should, where travel is necessary, prioritise more sustainable forms of transport, such as active travel, other alternatives to car use, or a combination of active travel and other alternatives to car use. The relationship between other houses elsewhere within settlement boundaries to services and facilities does not alter this conflict.
15. In reaching this conclusion, I have had regard to the opportunity that the proposals provide for inter-generational living and, in such instances, this could result in some linked journeys and increased efficiencies. However, there is no mechanism before me by which such inter-generational living would be secured, limiting the weight I afford this matter.
16. The LP says at paragraph 3.7 (g) that smaller greenfield extensions to existing settlements will still be required through the plan period. However, the appeal site is detached from Horton Heath and thus it would not be a smaller greenfield extension to an existing settlement. Policy S3 of the LP says that part of the housing supply would be expected to be delivered through unidentified windfall sites and, in this regard, the proposal would constitute a windfall site.
17. However, even as a windfall site, allowing five houses, irrespective of its occupiers, in this particular location would run counter to the overarching strategy established by the LP. Furthermore, the site is not well placed to encourage the use of transport modes other than by private vehicle. I therefore find that the proposal would not be in a suitable location having regard to the spatial strategy for the Borough. The proposal would therefore conflict with the requirements of Policies S1, S2, S3 and S5 of the LP when read as a whole, insofar as they relate to this main issue.

*Character and appearance*

18. When travelling south along the B354 there is a distinct change in character from the built-up area of Horton Heath when passing the junction with Blind Lane. At this point the landscape gives way to open fields on one side of the road and a belt of trees on the other side. Between Blind Lane and the housing at Braxell Farm and the larger housing estate opposite it, residential buildings become more dispersed and are interspersed with other land-based businesses, fields, groups and rows of trees. Views to the wider countryside beyond become increasingly evident as part of a transitional landscape. These spacious, green, and undeveloped gaps contribute to a semi-rural character along this part of the B354.
19. Although there is some built form at the appeal site, they are low-key structures of a type and form in keeping with a transitional landscape. Although somewhat untidy, the site remains largely undeveloped and creates an open break between the houses to the north and south. Its established boundary planting is dominant from both Snakemoor Lane and the B354 and contributes significantly to the immediate semi-rural character of the area.
20. From the footway to Horton Heath, the greater distance from the appeal site allows a more open aspect of the sky beyond the vegetation and an appreciation of its existing largely undeveloped open qualities. In this regard, the appeal site's open qualities on a prominent position near the roundabout make a small, but positive, contribution as part of this transitional landscape with a semi-rural character.
21. The loss of the gap with the proposed housing would incrementally erode the open qualities of this transitional landscape. The appellant has sought to downplay the submitted street scene images and I have no firm details regarding their accuracy. Nonetheless, the proposed buildings are not small houses and even taking into account the existing planting and proposed supplementary planting they would, in my judgement, be visible to varying degrees through the year from the roads near the roundabout and from the footway to Horton Heath.
22. The existing housing to the north and south of the appeal site includes large properties in a linear form, mostly with individual access points onto the B354. Although the two houses to the north are accessed from a single point on Snakemoor Lane, they retain the broad building line that characterises this part of the B354.
23. Units four and five on the proposed layout plan would broadly follow this building pattern, albeit without individual access points onto the B354. However, the proposal would significantly depart from this established pattern with the layout of five houses arranged in a small cul-de-sac arrangement from the turning head and with units one, two and three pushed back at depth away from the B354. In this regard, the proposed development would not be read as a genuine or natural infill development.
24. There are examples of other groups of houses elsewhere nearby, the proposed housing density would be low and there are positive features of the design of the proposed houses. Moreover, the landscaping would help reduce the views of the buildings from the public realm. In this regard, the proposed layout would not be entirely at odds with features found locally. Even so, the

combination of its depth, number of houses and layout clustered around a formal turning head would fail to harmonise with the established pattern on this part of the B354. This would exacerbate the harm from the loss of the open qualities of the site. Although the harm would be localised, it nonetheless weighs against the proposal.

25. The Framework recognises the intrinsic character and beauty of the countryside, and this is generally reflected in the Council's policies. In this regard, the difference in designation between the Settlement Gap on the other side of the road, in contrast with the appeal site as Countryside, does not alter or outweigh my findings in regard to this matter.
26. To conclude on this main issue, the proposal would have a harmful effect on the character and appearance of the surrounding area. As such, the proposal would conflict with the requirements of Policy DM1 of the LP and paragraphs 130 and 174 of the Framework. These stipulate, amongst other things, that all new development should not have an unacceptable impact on, and where possible, should enhance the character and appearance of the countryside.

#### *Other Material Considerations*

##### Adaptable and Accessible Housing Need

27. The Eastleigh Borough Assessment of Affordable Housing & Other Types Report (the Report) (2017) indicates that 750 households over the period 2016-2036 would be likely to need wheelchair adapted housing.
28. The Report is several years old, necessitates assumptions to reach its calculations and there will be some fluidity of the figures as the population and its needs change over time. Moreover, not all of the households would necessitate housing meeting Part M4(3) Standards. Nonetheless, although there is some disagreement between the main parties regarding up to date figures and how this will be delivered, the Council accept that there is a need for adaptable and fully wheelchair accessible housing within the Borough.
29. Policies DM25 and DM29 of the LP seek to deliver more suitable accessible housing, including properties suitable for wheelchair users and support the provision of specialist accommodation suitable for the needs of older people. The LP has been found sound and recently adopted, with due regard to the Public Sector Equality Duty (PSED) and Human Rights Act 1998. As such, I am satisfied that Policies DM25 and DM29 are not discriminatory.
30. Given that 590 of the 750 households identified in the Report are over the age of 75, meeting the needs of an ageing population will be a significant factor in the delivery. In this regard, the appeal proposal could contribute to this figure for those over 75. However, there is no mechanism to secure this, and the properties could also be solely occupied by younger people.
31. There are several mechanisms by which wheelchair accessing housing could be provided, including adapting existing homes and specialist housing for elderly. As such, whilst new housing developments will play an important role, they are not the only means of providing wheelchair accessible housing.
32. Despite this, there is a recognised need for wheelchair accessible housing, and although the Council are committed to monitoring delivery, there is no certainty that the demand will be met. In this regard, the appeal proposal

provides an opportunity to contribute through five houses built to Part M4(3) Standards. This is a matter that carries significant weight as a material consideration.

33. However, although the Planning Practice Guidance (the Guidance) does not require all housing for older people or wheelchair users to be in town centres, the location is a consideration. In this regard, the housing would be located where there would be a high dependency on private motor vehicles to access services and facilities. As such, although there would be some social coherence from a small group of houses, its divorced location moderates the weight I afford this matter overall.

#### Drainage/wetland research project

34. The appellant has partnered with Portsmouth University to utilise the site for a research project. This aims to demonstrate how a small housing scheme could achieve nitrogen neutrality through onsite mitigation. The results would take several years and be shared publicly in consultation with NE. If successfully demonstrated, the evidence could assist sites elsewhere as an alternative to a strategic mitigation scheme, or where a strategic mitigation scheme is not available.
35. The proposed drainage scheme involves, amongst other things, several water saving measures designed in the homes, a package treatment plant and wetland. The wetland would be designed by a member of the Constructed Wetland Association and would accord with NE guidance.
36. The appellant does not rely on this drainage scheme as mitigation and has instead agreed with the Council to pay a financial contribution to its strategic mitigation scheme (discussed in the Other Matters section of my decision). As such, the proposed drainage scheme and its associated research project are matters that go beyond mitigation.
37. Dr Cruddas from Portsmouth University is confident that the scheme would be successful in providing onsite mitigation. Even if the results were ultimately unsuccessful there would still be some benefits to future discussions and guidance on how to mitigate nutrient pollution onsite in smaller housing schemes such as this. However, the very nature of a research project is that the outcome of its results and subsequent benefits to the industry cannot be certain. It is therefore a matter that I attribute moderate weight to.

#### Other Benefits

38. The proposal seeks to achieve a biodiversity net gain which would be secured through a proposed condition. However, the extent of these benefits is unquantified with no metrics used in the supporting evidence, moderating the weight I afford this matter.
39. The proposal includes the offer of land to facilitate highway improvement works along the B354. The Highways Authority have requested this land to future proof the junction or for additional pedestrian and cycle links that may come forward in the local area in the future. However, given the uncertainty of the deliverability of such works and as the land is not specifically required now, I give this benefit limited weight.

40. The government places considerable importance on boosting the supply of housing, including from small scale developments and by making effective use of land. Even though the Council can currently demonstrate a five-year supply of housing land, the delivery of housing remains a benefit and the proposal would deliver economic and social benefits from the construction and occupation of the housing.
41. I have no reason to doubt that there is sufficient capacity at the site to create good quality family homes with spacious gardens and that there is no impediment to the deliverability of the site. With five dwellings proposed, the associated benefits would be small, weighing, to a small degree, in favour of the proposal.

### **Other Matters**

42. My attention has been drawn to various other schemes. The Hamblewell appeal<sup>2</sup> was based on the specific needs of an individual and was allowed prior to the adoption of the LP, distinguishing it from the proposal before me. The housing to the south of Maddoxford Lane, Boorley Green<sup>3</sup>, the nearby housing at the Brigadier Gerard and at Braxell Farm were approved prior to the adoption of the LP, in contrast with the proposal before me. Moreover, the appeal site can be distinguished from these other sites due to the combination of the appeal site's relationship to the pattern of surrounding built form, location detached from the settlement and due to its location, and the nature of routes, which would lead to a high dependency on the use of private motor vehicles to access services and facilities.
43. The appeal site falls within the recreational disturbance Zone of Influence for the Solent and New Forest European designated sites, whose interest features include, over wintering Brent Geese and summering nightjar, respectively.
44. The proposed development would result in an increase in the number of people living in proximity to these habitat sites. In combination with other plans and projects, this is likely to have a significant effect on the habitat sites through increased recreational activity and, in the case of the Solent, an increased nutrient load. As such, there is a need to ensure that new residential development and any associated impacts on designated sites are compliant with the Habitat Regulations.
45. The appellant has agreed mitigation with the Council to address these matters and they are proposed to be secured through the submitted UU. As the competent decision-making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

### **Planning Balance**

46. The LP has only recently been adopted and is consistent with the Framework and the conflict with relevant policies is a matter that weighs significantly against the proposal. Indeed, the spatial strategy of the Borough would be undermined if it was allowed, bearing in mind that Paragraph 15 of the Framework reminds decision-makers that the planning system should be

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<sup>2</sup> APP/W1715/W/18/3216696

<sup>3</sup> APP/W1715/W/20/3265838

genuinely plan-led. This reflects the primacy of the development plan set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004. To allow development contrary to their provisions would therefore undermine and dilute the plan-led system and the future pattern of development in the Borough. In combination with the harm to the character and appearance of the area this weighs significantly against the proposal.

47. The proposal is not designed to meet the specific needs of an individual but would be available to people that satisfy the occupancy criteria of one occupier needing a wheelchair. In this regard, I am mindful that situations such as that proposed could be repeated across the countryside, in locations divorced from settlements, where there would be a high dependency on the use of private motor vehicles to access services and facilities, where similar occupancy conditions might be offered. Allowing this appeal would make it more difficult to resist further planning applications for similar developments. The cumulative effect of such ad-hoc developments would exacerbate the harm I have identified and further undermine the spatial strategy.
48. Article 14 of the Human Rights Act 1998 provides for the prohibition of discrimination; however, it does not infer any free-standing rights. The appellant's submissions must therefore be weighed against the public interest in this case. Having regard to the legitimate and well-established planning policy aims to protect the character and appearance of the locality and to focus new housing in sustainable locations, in this case I attach greater weight to this public interest. Dismissal of the appeal is therefore necessary and proportionate and would not result in a violation of the human rights of any potential future occupier.
49. I have also had due regard to the PSED contained in section 149 of the Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. For the purposes of the Equalities Act protected characteristics include, amongst other things, physical impairments.
50. Even if I accept that unallocated land outside the defined urban edges of the LP is vital to satisfy households needs for wheelchair accessible housing, it has not been demonstrated that the appeal scheme as designed, and its location is the only way of making such a housing contribution. As such, although a public benefit, given my findings on the suitability and location of the appeal site in the first two main issues, it carries only moderate weight in favour of the proposals.
51. Drawing the above together, whilst I recognise the benefits in providing the specialist form of housing proposed, along with the other identified benefits, I am not persuaded that these material considerations outweigh the harm and policy conflicts in relation to the first two main issues.

## **Conclusion**

52. For the reasons given above, the proposals would conflict with the development plan and there are no material considerations that outweigh this conflict. Therefore, the appeal is dismissed.

*Mr R Walker*

INSPECTOR

**APPEARANCES**

**FOR THE APPELLANT:**

Malcolm Hill	Appellant
Louise Cutts	Wessex Planning
Peter Cruddas	Portsmouth University

**FOR THE LOCAL PLANNING AUTHORITY:**

David Huckfield	Eastleigh Borough Council
Summer Sharpe	Eastleigh Borough Council

**INTERESTED PERSONS:**

Colin Mercer	Botley Parish Council
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**DOCUMENTS:**

Photos showing nearby housing at Brigadier Gerard and Braxell Farm

Botley Neighbourhood Plan Summary Update

Eastleigh Borough Assessment of Affordable Housing & Other Housing Types Report (2017)