



## Appeal Decision

Site visit made on 11 June 2019

**by S Edwards MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

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**Appeal Ref: APP/X1735/W/18/3214079**

**Land adjacent to Mandai, St Peters Road, Hayling Island PO11 ORT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Laurence Stanley against the decision of Havant Borough Council.
  - The application Ref APP/18/00207, dated 15 February 2018, was refused by notice dated 21 September 2018.
  - The development proposed is use of land for touring caravan site.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Laurence Stanley against Havant Borough Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The National Planning Policy Framework (the Framework), which was revised in July 2018, was subsequently updated on 19 February 2019. References to the Framework within this decision relate to the latest version published in 2019.
4. The main parties have referred to the Council's Draft Havant Borough Local Plan 2036. However, this Draft Borough Local Plan has yet to be found sound, and therefore very limited weight can be ascribed to it at this point.
5. Within the decision notice, the Council's reason for refusal refers to Policy CS9 of the Havant Borough Core Strategy – March 2011 (CS). As part of their submissions, the Council has however clarified that CS Policy CS9 (Housing) was quoted in error, and that CS Policies CS5 (Tourism) and CS16 (High Quality Design) should have instead been referred to within the reason for refusal. I shall proceed on this basis.

### Main Issues

6. Following the publication of a Position statement on nutrient neutral development<sup>1</sup>, the Council has submitted further information in respect of the effect of the proposal on the Solent Special Protection Areas. This notably concerns the likely effects from proposals providing overnight accommodation on water quality. Both main parties were provided the opportunity to comment on the information submitted by the Council.

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<sup>1</sup> Adopted by Havant Borough Council's Cabinet on 26 June 2019.

7. I therefore now consider the main issues to be:

- The effect of the proposal on the Solent Special Protection Areas (SPAs); and
- The effect on the character and appearance of the area, having particular regard to the site's location within the open countryside.

## **Reasons**

### *Solent SPAs*

8. The appeal site lies within proximity to the Solent SPAs, which are protected sites designated under the Birds European Directive, as transposed in the UK by the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations), setting out a strict system of protection for European Sites and European Protected Species. Natural England has recently issued revised advice in respect of increased levels of nitrogen and phosphorous input to the water environment in the Solent, causing a dense growth of certain plants, otherwise known as eutrophication which affects the species using the Solent.
9. The Council's position statement, which reflects Natural England's advice, clearly states that forms of development providing overnight accommodation, such as the appeal proposal, are considered to increase nitrogen and thus cause likely significant effects on European Sites. In such circumstances, the Habitats Regulations state that an Appropriate Assessment (AA) is carried out.
10. Having regard to the nature of the proposed development and the increased risk which would stem from the additional waste water as a result of the proposed use, I consider that in the absence of mitigation measures, the appeal scheme would present likely significant effects on the Solent SPAs which, either alone or in combination with other plans and projects, could adversely affect the integrity of these protected sites.
11. The Council's position statement advises that an avoidance and mitigation package will be necessary for almost all proposals which, it is suggested, can be addressed by way of Grampian conditions. The suggested condition would notably require a mitigation package addressing the additional nutrient input arising from the development to be agreed with the Local Planning Authority, and a financial contribution to facilitate the delivery of the strategic mitigation package.
12. However, I note that there is currently no agreed strategy for collecting contributions for that particular purpose. It is also unclear how the contribution required as part of the mitigation package would be secured, other than through a planning obligation. As no planning obligation has been submitted as part of this appeal, the measures suggested as part of the condition would not be adequately secured, and would not bind the Council to spend the contribution towards the delivery of the mitigation package.
13. Additionally, the Planning Practice Guidance<sup>2</sup> (PPG) advises that negatively worded conditions limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be

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<sup>2</sup> Paragraph: 010 Reference ID: 21a-010-20190723.

appropriate in the majority of cases. The relative proximity of the site to a SPA would not amount to the exceptional circumstances as envisaged by the PPG.

14. I have had regard to the appellant's suggestion that the existing septic tank could be used, but no substantive information has been submitted to demonstrate that this would constitute a suitable and effective alternative to prevent additional nitrogen and phosphorous entering the water environment of the Solent. Whilst there is a possibility that visitors may not use the facilities provided on-site, it is highly likely that they would seek to dispose of the wastewater contained within the cassette of the caravan prior to leaving the site. Additionally, on the basis of the evidence before me, I am unable to conclude that the proposed use of the site would be as or less intensive than the existing lawful use as a garden detached from a dwelling.
15. In the absence of evidence to the contrary, I conclude that the appeal scheme must be dismissed on the grounds of the likely adverse effects on the integrity of the Solent SPAs, either alone or in combination with other plans and projects, as a result of additional nitrogen and phosphorous from additional waste water generated by the proposed use. The proposal would therefore conflict with Habitats Regulations and Policy CS11 of the Havant Borough Core Strategy – March 2011 (CS) which, amongst other things, seek to protect habitats through appropriate adaptation and mitigation measures.

#### *Character and appearance*

16. The appeal site comprises a parcel of land located at the entrance of the small village of Northney, and lies immediately to the south of a residential property known as Mandai, which it was severed from a number of years ago. As part of my site visit, I was able to observe that the plot is clearly separated from Mandai and is largely screened on all sides by mature landscaping. The site is otherwise surrounded by open fields.
17. CS Policy CS17 sets out the settlement strategy for the area administered by the Council, which seeks to concentrate new development within the five urban areas of Havant, Leigh Park, Waterlooville, Emsworth and Hayling Island. Policy AL2 of the Havant Borough Local Plan (Allocations) – July 2014 (LP) further emphasises the Council's settlement strategy, whilst making clear that land outside the defined urban area of Hayling Island is 'non-urban' rather than undeveloped gap. As shown on the Proposals Map, the appeal site lies outside the defined urban areas of Hayling Island. It is therefore located in a non-urban area where, in accordance with CS Policy CS17, development will only be permitted if it is consistent with the policies for the countryside set out in national policy.
18. CS Policy CS5 supports development proposals that provide hotels and other types of tourist accommodation, which are not restricted to urban areas. Camping facilities are not generally associated with the urban environment and are more commonly found in countryside locations. The proposed caravan site would be located outside an urban area, but would support small scale rural tourism. Paragraph 83 of the Framework advises that planning decisions should enable sustainable rural tourism and leisure development which respect the character of the countryside. Additionally, paragraph 84 of the Framework recognises that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.

19. As noted above, the site lies just outside the village of Northney and within proximity to residential properties. Whilst the caravan site would include some permanent features such as a site cabin, it would have a limited effect on the character and appearance of the area due to the transient nature of the use, the screening provided by the mature trees and landscaping, and the limited scale and massing of the caravans and other structures on the site. Equally, any additional paraphernalia associated with the proposed use would to a large extent be screened by the existing landscaping, fencing and gate to the front of the site.
20. For the foregoing reasons, I consider that the effect of the proposal on the character and appearance of the countryside would be acceptable, and therefore find no conflict with the design aims of CS Policy CS16. Furthermore, the appeal scheme would accord with the policies for the countryside as detailed within the Framework, and there would subsequently be no conflict with CS Policies CS5 and CS17, as well as LP Policy AL2.

**Conclusion**

21. For the reasons detailed above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

*S Edwards*

INSPECTOR