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## Appeal Decision

Inquiry held on 24 and 25 February 2015

Site visit made on 23 and 24 February 2015

**by Louise Phillips MA (Cantab) MSc MRTPI**

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

**Decision date: 7 May 2015**

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**Appeal Ref: APP/M1710/A/14/2229095**

**Land to the rear of Nos 191 - 211 Lovedean Lane, Waterlooville,  
Hampshire PO8 9RT**

- 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 Southcott Homes Limited against the decision of East Hampshire District Council.
  - The application Ref 55406, dated 22 May 2014, was refused by notice dated 3 November 2014.
  - The development proposed is the erection of 38 no. dwellings, vehicular and pedestrian access, parking, secure cycle storage and servicing; and the creation of new public open space, landscape and ecology management.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The decision notice includes six reasons for refusal, five of which concern the absence of financial contributions or other planning obligations which the Council would wish to see secured by means of a legal agreement or unilateral undertaking. However, an executed legal agreement pursuant to S106 of the Act<sup>1</sup> (S106 Agreement) was submitted at the Inquiry, which includes obligations related to integrated transport; education; off-site public open space; affordable housing; and community facilities. The Council is satisfied that this would overcome the relevant reasons for refusal and so it does not pursue them now. I return to this matter later in my decision.
3. The decision notice helpfully states the plans to which the Council had regard in determining the application, but whereas it lists drawing Nos 1019-PD-104 Revision D and 1019-PD-131, I have been provided with Revisions E and A of those drawings respectively. The parties confirmed that the versions before me are correct and I have determined the appeal on this basis.

### Main Issue

4. In light of the above, the main issue is the effect of the proposed development upon the living conditions of adjacent occupiers in Lovedean Lane with particular regard to privacy.

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<sup>1</sup> Town and Country Planning Act, 1990.

## Reasons

### *The Proposal*

5. The appeal site comprises approximately 1.9 hectares of open land to the west of Lovedean Lane and to the south of New Road. It is proposed to construct 38 dwellings, including 15 affordable units, as a combination of detached houses, semi-detached and terraced houses and two bungalows. Four of the houses would front New Road and another two would front Lovedean Lane, while the majority would be arranged around an open space in the centre of the site, with their rear gardens facing the boundaries.
6. The southern and western boundaries of the site are marked by mature trees and hedgerows, which provide a dense screen against views in and out. The land to the immediate south (the "Bargate" site) is presently an agricultural field, but outline planning permission has been granted for 40 dwellings to be built there<sup>2</sup>. No issues have been raised in respect of the relationship which would exist between the new dwellings on either side of the southern hedge.
7. The eastern boundary of the site is with the rear gardens of six existing residential properties on Lovedean Lane (Nos 193, 195, 197, 199, 203 and 209) and it is the effect of the proposed development upon these occupiers which is contentious for the parties. However, while the reason for refusal concerns both privacy and daylight, the Council decided not to defend the latter issue at the Inquiry. Its decision follows the appellant's submission of a Daylight, Sunlight and Shadow Assessment<sup>3</sup>, which concludes that none of the neighbouring properties would experience a material reduction in natural light when assessed against the BRE guidance<sup>4</sup>. I have no reason to doubt the results of the assessment and so my decision focuses on the issues related to privacy.

### *Privacy*

8. 15 of the new dwellings, Plot Nos 22-36, would back onto the six Lovedean Lane properties. Accepting that it is well screened for part of its length, No 203 Lovedean Lane would, for example, share a boundary with six of the new properties. Nos 193-199 Lovedean Lane, which do not presently benefit from a great deal of boundary screening, would each back directly onto two new dwellings forming part of a terrace of three. Thus, while the density of development on the site overall would not be particularly high at 20 dph, the difference between the density of the new and existing development along this eastern boundary would be marked.
9. The distance between the facing elevations of the new and existing dwellings would range from approximately 24m at the northern end of the boundary behind No 209 Lovedean Lane, to 37m at the southern end of the boundary behind No 193. Therefore, in all cases, the separation distances involved would exceed the 20m used as a 'rule of thumb' by urban designers. In some cases, the distance would clearly be exceeded by a significant margin. However, the degree of overlooking which would affect one existing house backing onto two, three or even six new ones would be significantly greater

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<sup>2</sup> Council Ref 54596/001.

<sup>3</sup> Daylight, Sunlight and Shadow Assessment, by Nathaniel Lichfield and Partners, dated January 2015.

<sup>4</sup> Building Research Establishment Report: Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice, 2011.

than if it were to border just one. The effect would be real as well as perceived because with more adjoining households and more facing windows, there is a greater chance that someone would be looking out.

10. Furthermore, the site slopes upwards from east to west so that with the possible exception of Plot 36, the proposed dwellings would all be on higher ground than the existing ones on Lovedean Lane. In this respect, I note that the measurements given in Table 5 of Mr Pullan's proof of evidence represent the difference between the ground level upon which the proposed dwellings would stand, and the (generally greater) height of their proposed finished floor levels. However, they do not reflect the fact that the existing properties on Lovedean Lane are themselves below the level of the appeal site<sup>5</sup>.
11. The difference in ground/floor levels between the existing and proposed dwellings would serve to accentuate the effect of overlooking of the former, particularly from first floor windows. Whilst it has been put to me that overlooking from first floor windows, especially bedroom windows, is to be expected and is therefore tolerable, there appears to be no firm basis for this assertion. To my mind, bedrooms are important living spaces in which residents are likely to spend a considerable amount of time, both during the day and in the evening.
12. Turning to the effect upon the individual existing properties, the gardens and rear elevations of Nos 193 – 199 Lovedean Lane could be overlooked from bedroom windows in at least two of the new dwellings. Whilst it would not be possible to see clearly into the facing rooms, the perception of unwelcome surveillance would remain. The yew tree in the garden of No 203 would effectively prevent overlooking from the dwellings to its north, but this would leave the bedrooms of Plots 28 to 30 (and possibly 31) to overlook its side garden. No 209 would adjoin a bungalow on Plot 36 directly to the rear, but the terraced houses on Plots 34 and 35 to the immediate south would be perceived as being quite close. Whilst the presence of a mature walnut tree would provide some mitigation against overlooking, its value as a screen would be diminished by the considerable height of the canopy.
13. I acknowledge that the layout of the proposed development would take some account of the issues I have identified. Where the difference in levels would be greatest, at the southern end of the site, the separation distances would also be greatest. Where the proposed and existing dwellings would be closer together, such as with Plots 29 – 36 and Nos 203 and 209 Lovedean Lane, a bungalow is proposed and, as indicated above, some screening would be provided by large protected trees. More generally, it is proposed to erect a close-boarded fence of at least 1.8m in height along the boundary of the site and to provide landscaping to be approved by condition. The parties agree that these measures would be sufficient to prevent undue overlooking from ground floor windows.
14. Nevertheless, having carefully considered the relationship between the new and existing dwellings, I determine that the height and density of those proposed, taken together, would result in significant overlooking from first floor windows, even at the distances involved. Therefore, while I do not seek to challenge the

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<sup>5</sup> Interested parties also challenged the separation distances measured on drawing No 1019-PD-105 E. However, the distances were measured at the site visit in their presence and it was broadly agreed that that the drawing provides a reasonably accurate representation in this regard.

general applicability of the 20m 'rule of thumb', the characteristics of the appeal site, and of the particular development proposed, indicate that it is insufficient in this case. My view is based not only upon the evidence I have read and heard, but upon my own detailed assessment from within the site itself and from the gardens of several neighbouring properties.

15. In reaching this view, I have taken account of the outline planning permission granted on the adjacent Bargate site, which does indeed show a terrace of three-bedroom houses just 15m from the rear boundary of No 179 Lovedean Lane. In this case, however, the intervening space would consist of an access road and communal landscaped area, to which the new dwellings would be oriented front-on.
16. Whilst I can accept that in the Bargate situation whereby public space would adjoin private space, problems such as noise and light disturbance could arise, the risk of harmful overlooking would be significantly less. In particular, the fact that the landscaped area would be communal rather than privately owned suggests that more substantial planting would be possible. Moreover, whatever is planted is more likely to be retained and maintained as a screen in the long term. Therefore, the Council's positive decision in this case carries little weight in my own.
17. I have also had regard to the appeal decision provided by the appellant in which the Inspector considered a recommended separation distance of 22-25m to be "generous". However, she also considered it appropriate to take account of the particular site characteristics, topography and building design in assessing the proposed layout. Having done so, she found that living conditions at several existing properties would be unduly affected by loss of outlook or privacy. Notwithstanding that the distances in the scheme before me are mainly in excess of 22-25m, I have had appropriate regard to similar site-specific matters. Whilst I acknowledge that the appellant has not been able to find a decision in which distances of the order proposed have been held unacceptable, this does not persuade me to conclude otherwise.
18. Finally, I have considered whether the harmful effects I have found could be overcome by conditions, specifically conditions requiring boundary planting and lowered floor levels. However, the parties agree that reasonable landscaping within a domestic garden is unlikely to be tall enough to prevent overlooking from first floor windows. Furthermore, as suggested above, I would be concerned about whether its retention could be guaranteed in the long term.
19. In respect of lowered floor levels, there is nothing in writing before me to suggest that this would be possible, either from an engineering perspective or in terms of accommodating drainage and services below ground. Whilst the appellant's representatives received positive verbal instructions during the Inquiry, I have no information about the extent of change that could be accommodated. Therefore, given the fundamental nature of the issue, I am not content to rely upon a condition to achieve satisfactory mitigation. In any case, such a condition would not alter the density of development along the boundary.
20. For the reasons given above, I conclude that the proposed development would be significantly detrimental to the living conditions of all six adjacent occupiers on Lovedean Lane in respect of privacy. Thus it would conflict with Policy CP27

of the Joint Core Strategy<sup>6</sup>, which, amongst other things, seeks to protect the amenities of neighbouring occupiers from the unacceptable effects of development, including loss of privacy. With reference to the precise wording of the policy, the extent of the overlooking I have identified would be unacceptable. It would also conflict with one of the core planning principles set out at paragraph 17 of the National Planning Policy Framework (the Framework), to secure a good standard of amenity for all existing and future occupiers of land and buildings.

## **Other Matters**

### *Principle of Development, including Character and Appearance*

21. The appeal site lies outside the Council's defined settlement policy boundaries and is therefore in the countryside for development plan purposes. In such locations, Policy CP19 of the Joint Core Strategy imposes a general policy of restraint in order to protect the countryside for its own sake. However, having regard to its relationship to the existing settlement and local services, as well as its effects upon the character and appearance of the area, the Council nevertheless considers that the site represents a sustainable location for development (Proof of Evidence of Mr Moys, paragraph 1.7). Consequently it does not dispute that it is suitable for housing in principle.
22. The Council's position on this point stands despite the fact it now considers it has a five year housing land supply as required by paragraph 47 of the Framework, whereas when the application was refused, it did not. The appellant disputes the Council's evidence on housing land supply but, in light of its stance in respect of locational sustainability, neither party believes that it is incumbent upon me to reach a view on this point.
23. Notwithstanding the agreement of the main parties that living conditions is the only contentious matter in terms of whether the proposal would be sustainable, interested parties continue to dispute the principle of the development for other reasons. In particular, they suggest that the site is located in Lovedean Village, which is separate from the larger settlement of Horndean; and that the proposal would harm the character and appearance of the area.
24. Whereas Horndean is identified as a 'Level 4' settlement expected to accommodate the 700 additional homes required in the area, Lovedean is identified as a 'Level 2' settlement, appropriate for lesser development. Indeed the appeal site is not identified for potential allocation in the Council's emerging plan. By contrast, an identified site closer to Horndean at Hazelton Farm, was granted outline planning permission for up to 700 dwellings on 15 April<sup>7</sup>.
25. However, the Inspector who determined a recent appeal in Havant Borough, concluded that the identification of a five year housing land supply would not preclude the favourable consideration of a proposal if it would represent sustainable development (paragraph 21)<sup>8</sup>. Having regard to the aim of the Framework to boost significantly the supply of housing, and noting that the Core Strategy in this case seeks a minimum of 700 new dwellings in Horndean, I agree that the grant of planning permission at Hazelton Farm need not automatically preclude development on other sustainable sites.

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<sup>6</sup> East Hampshire District Local Plan: Joint Core strategy (with South Downs National Park Authority), 8 May 2014.

<sup>7</sup> At the time of the Inquiry, the application had not been determined.

<sup>8</sup> Appeal Ref APP/X1735/A/13/2192777.

26. In respect of the sustainability of the appeal site, while it is certainly located on the fringes of the built up area, where existing development is thinning out, the settlement boundary of Horndean and Lovedean is continuous for the purposes of Policy CP19. The site abuts the boundary and the new dwellings would be seen behind rows of houses along both the Lovedean Lane and New Road frontages. Thus they would neither be isolated nor represent an intrusion into genuinely open countryside.
27. In terms of access to services, the site is some distance from the centre of Horndean, but there are a few shops, including a large convenience store, within approximately 800m. This is a reasonable walking distance for most people and so they would not be dependent upon the private car for their day to day needs. I do not doubt that many future residents would choose to own cars, but the journey required to access the wider range of services in Horndean would be short.
28. Turning to character and appearance, a number of objectors refer to the harmful effects of the development upon the valley sides and I agree that the backland position of the dwellings on sloping land would depart from the original linear settlement pattern. However, the eastern slope to the south of the site is already built up, and the Bargate scheme would extend this pattern to the western side of the road. In this context, the effect of the appeal scheme would not be significant.
29. For these reasons, I agree with the Council and the appellant that the appeal site represents a sustainable location for housing in principle and this would weigh against the conflict with Policy CP19. Consequently, I have not found it necessary to determine whether or not the Council's five year housing land supply is made out and the issue has not been tested as part of this appeal. The various Council and appeal decision to which I was referred in this regard (see Additional Documents below) are not, therefore, determinative of the appeal.

#### *Other Issues*

30. In reaching my decision, I have had regard to the other issues raised by interested parties, including highway safety; flood risk; and the effect of the development upon nearby Listed Buildings. Starting with highway safety, access to the site would be via New Road, which is on a hill. I accept that this can make it difficult to negotiate in icy conditions, but it is essentially a quiet, residential, no-through road. The Highway Authority considers that adequate visibility could be achieved at the access; and that the junction with Lovedean Lane could accommodate the additional traffic movements anticipated. It is clear that the concerns of local residents have been taken into account in reaching this view, and I find no compelling reason to disagree.
31. Turning to flood risk, while I have seen photographs which demonstrate that residents' concerns are not without foundation, the Council's specialist is satisfied that the proposed drainage strategy would maintain run-off rates at pre-development levels. I understand that Southern Water and/or the Environment Agency have previously objected to other developments in the area, but they have not in this case. This understandably gives objectors cause for concern, but I have no reason to conclude that the authorities did not make a reasoned judgement.

32. In respect of Listed Buildings, the Council advised after the close of the Inquiry that No 203 Lovedean Lane has been statutorily listed as Grade II as a result of the owner's application to English Heritage. The Notification Report states that it is of historic interest as one of a group of scattered houses in Lovedean dating from the 17<sup>th</sup> Century and earlier. The building itself is noted for its substantial timber frame and plan form. However, both the report and listing entry focus on the architectural merit of the building and say little of its setting, which includes a row of houses of various ages and styles. In this context, while the proposed development would clearly change the outlook from the rear garden of the building, I do not consider that its significance would be harmed.
33. Similarly, the setting of "The Walnuts", a pair of semi-detached, thatched cottages opposite the junction with New Road, also includes numerous dwellings of various types and styles. The proposed development would be on the other side of Lovedean Lane and the bulk of it would be largely obscured by an intervening row of frontage properties. Therefore, having special regard to the desirability of preserving a Listed Building or its setting, I do not consider that the proposed development would be harmful.
34. Consequently, none of the other matters raised above changes my view that the site would be suitable for development in principle. However, this does not alter my findings in respect of the effect of the proposal on living conditions.

### **Conclusion**

35. I have found that the proposed development would be significantly detrimental to the living conditions of adjacent occupiers on Lovedean Lane in respect of privacy. Therefore, in terms of the three dimensions of sustainable development set out at paragraph 7 of the Framework, the appeal scheme would result in an avoidable conflict with the environmental role.
36. Against this, the scheme would have benefits including market and affordable housing; publicly accessible open space; and construction jobs. Whilst financial receipts from the New Homes Bonus and Council Tax might also be a benefit, the connection between their use and the appeal scheme is not clear and this reduces the weight I give to them. Overall, the sum of the benefits to which I have had regard is not sufficient to outweigh the harm I have found. I therefore intend to dismiss the appeal on the basis of the main issue of living conditions and so the planning obligations provided in the S106 Agreement are a neutral factor in the planning balance. As they could not be determinative of the outcome, I have not considered them further in respect of the relevant tests in law and policy.
37. For these reasons, the proposed development would not constitute the sustainable development for which there is a presumption in favour in the Framework and so I conclude that the appeal should be dismissed.

*Louise Phillips*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Daniel Stedman Jones, of Counsel	Instructed by East Hampshire District Council.
He called: Nick Moys	Principal Planner, Urban Vision Partnership Limited.
And: John Holmes	Principal Planning Officer, East Hampshire District Council, spoke only in relation to planning conditions and obligations.

### FOR THE APPELLANT:

Sasha White, of Queen's Counsel	Instructed by Neame Sutton.
He called: Colin Pullan	Urban Design Director, Nathaniel Lichfield and Partners.
And: David Neame	Director, Neame Sutton Limited.

### INTERESTED PERSONS:

Warren Green	Local Resident and Chairman & Treasurer of Lovedean Village Residents' Association.
Sara Schillemore	Elected Member for Horndean (Catherington and Lovedean Ward).
Steve Anderson (who also read a statement on behalf of David Gorshkov)	Local Resident
David Elliott	Local Resident
Stephen Cox	Local Resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Council's Factual Summary on Five year Housing Land Supply at 23 February 2015.
2. Email from Jon Holmes to David Neame regarding a revised application, dated 10 December 2014.
3. Council's Committee Reports in relation to Land East of Will Hall Farm, Alton, Ref 55222/001; and Land at Cadnam Farm, Alton, Ref 55428/001.
4. Appeal Decision for Land North of Bannold Road, Waterbeach, Cambridgeshire, Ref APP/W0530/A/13/2209166.
5. Representation by the Lovedean Village Residents' Association and statements read by Mr Anderson, and Mr Cox, who also showed a short video.
6. Executed S106 Agreement, dated 24 February 2015.

7. Appeal Decision for Land North of Goldring Close and South of Beech Grove, Hayling Island, Ref APP/X1735/A/13/2192777.
8. Schedule of developer contributions for open space/environmental improvements from 2013.