



## Appeal Decision

Site visit made on 19 July 2022

**by Robin Buchanan BA (Hons) MRTPI**

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

**Decision date: 16<sup>th</sup> September 2022**

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**Appeal Ref: APP/C1760/W/21/3289032**

**Land at Bilbao Court, Andover SP10 1LE**

- 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 Irongate Developments Ltd against the decision of Test Valley Borough Council.
  - The application Ref 21/00456/FULLN, dated 12 February 2021, was refused by notice dated 17 June 2021.
  - The development proposed is described as the demolition of redundant garages, and erection of 9 no. flats with associated access, parking spaces and landscaping.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. With the appeal the appellant submitted a draft planning obligation in the form of a unilateral undertaking (draft UU). It relates to intended mitigation of the effect of the proposed development on the water environment of the Solent and seeks to overcome the Council's reason for refusal 04. During the appeal, the appellant sought to agree additional mitigation with the Council. I deal with this matter in the first main issue below.

### Main Issues

3. The main issues are the effect of the proposed development on:
  - the water environment of the Solent;
  - the living conditions of the future residents of flat Nos 1, 4 and 7 with regard to external amenity space, privacy, noise and disturbance, and on the living conditions of some existing residents of Bilbao Court with regard to privacy;
  - the character and appearance of the area; and
  - the provision of car parking for existing residents of Bilbao Court.

### Reasons

4. The appeal site contains 40 garages in a courtyard next to a development of 38 flats arranged mostly in three-storey blocks in Bilbao Court. This cul-de-sac is in a mainly residential part of Andover. The proposal is to redevelop the site with a three-storey block of 9 two-bedroom flats, including 21 car parking spaces.

### *The Solent*

5. The site is within a zone of influence of the water environment of the Solent<sup>1</sup>. This European habitats site<sup>2</sup> has been designated to protect its important habitat for bird species. A significant effect on it would be likely to occur from the residential development in this appeal alone, or in combination with other development, where increased nitrates from foul wastewater entering the Solent would exacerbate eutrophication harmful to this habitat and species.
6. The Council has referred me to Natural England (NE) standing advice. This suggests that one way to address this issue is for new development to achieve 'nutrient neutrality' so that it does not increase the level of nitrates entering the Solent. The main parties consider that subject to securing this form of mitigation the proposal would not have a significant adverse effect on the integrity of the Solent.
7. The appellant agrees that its original nutrient budget calculation means the proposal would generate increased nitrates which would need to be off-set to achieve nutrient neutrality. The draft UU refers to a management plan, including woodland management and planting plans. It seeks to address the impact of the development by permanently taking mitigation land elsewhere at Fullerton Farm out of agricultural use to be managed as woodland to secure a requisite equivalent reduction in nitrates entering the Solent.
8. NE updated its advice in March 2022, including a new methodology for calculating the nutrient budget. In light of this the main parties agree that there is a shortfall in mitigation capacity in the scheme proposed in the draft UU — in essence, the proposed mitigation land is inadequate in area and in nature to achieve nutrient neutrality for the development.
9. The appellant's updated nutrient assessment and budget<sup>3</sup> proposes to supplement the mitigation in the draft UU by purchasing 'nitrogen mitigation credits' from the Council to address the shortfall. To purchase such credits from the Council's own nitrate mitigation scheme, which relates to land at Roke Manor (or direct from that landowner or any other land owner providing a similar mitigation scheme) would require the appellant to make a requisite financial contribution.
10. Notwithstanding that the Council 'would not be in a position to offer credits from its own nitrate mitigation scheme at this time' and that it has some concerns with the draft UU and with NE's updated advice, which the appellant has sought to address, the draft UU before me is unsigned and incomplete, including that there is no management plan or plan identifying the mitigation land appended to it. Moreover, it does not make provision for a financial contribution to purchase nitrogen credits from an appropriate provider to remedy the shortfall in mitigation capacity and remains an 'anticipated', not actual or agreed, cost. There is no other planning obligation before me to this effect.
11. The Council could not, therefore, rely on the draft UU to secure all, or any part, of the currently proposed mitigation scheme, nor can I. Furthermore, I am unable to determine whether the draft UU, or any other planning obligation, would accord with the provisions of Regulation 122 of the Community

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<sup>1</sup> Which includes the Solent Special Protection Area (SPA) and the Solent Special Area of Conservation (SAC)

<sup>2</sup> The Conservation of Habitats and Species Regulations 2017 (as amended) – 'Habitat Regulations'

<sup>3</sup> Prepared by Aqua Callidus, dated 13 July 2022

Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in Framework paragraph 57. Accordingly, I give the draft UU no weight in this appeal.

12. Though not suggested to me, I have considered whether a suitable negatively worded planning condition could be imposed to limit the development that can take place until a suitable planning obligation or other agreement has been entered into to secure appropriate mitigation, including payment of a financial contribution. However, Planning Practice Guidance<sup>4</sup> (PPG) sets out that such an approach is unlikely to be appropriate in the majority of cases. There is no evidence that delivery of the development would be at serious risk, nor has any other exceptional circumstance been advanced by the appellant. I am not aware of any engagement with the Council in this regard.
13. Furthermore, there is a significant gulf between the main parties on this issue. Accordingly, I could not anyway be certain that such a condition would be reasonable or enforceable or, therefore, meet all the tests set out in Framework paragraph 56 and in PPG<sup>5</sup>. Consequently, it would not provide an appropriate basis to grant planning permission.
14. In these circumstances, and taking all of the above into account, based on the limited or incomplete information before me, as the competent authority in this appeal I am unable to undertake a satisfactory appropriate assessment<sup>6</sup>, including consultation with NE. I cannot, therefore, be certain that the proposal would not adversely affect the nature conservation interest and integrity of the Solent. In the absence of appropriate mitigation, I find that the proposed development would cause significant harm to the water environment of the Solent. Consequently, it would conflict with Policy E5 of the Test Valley Borough Revised Local Plan 2016 (LP). This policy includes that development should conserve biodiversity and satisfy the requirements of the Habitats Regulations with regard to European sites.

### *Living conditions*

#### Future residents

15. Each of the three ground floor flats (Nos 1, 4 and 7) would have a front garden terrace for private use, accessed from within each flat. Two would be near the communal entrance to four upper storey flats and all would be next to a path running around the block of flats, including for access to cycle and bin stores and to car parking. While the Council does not have an adopted space standard, the size and shape of each terrace would be sufficient for outdoor activity such as to enjoy a meal at a small table, sit with visitors, relaxation or dry clothes. The terraces would be larger in area than the balconies for the upper floor flats and these spaces could be defined by landscaping.
16. However, no such landscape details are before me. To provide meaningful screening of private activity and prevent overlooking by resident or visitor passers-by, the landscaping would likely have to be tall and dense. Given the narrow (approximately 2m) width of the terraces this would be overbearing and detract from their use. It would also abruptly truncate outlook from the ground floor living and dining rooms and three bedrooms, and significantly restrict

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<sup>4</sup> Paragraphs 21a-005-20190723 and 21a-010-20190723

<sup>5</sup> Paragraph 21a-003-20190723

<sup>6</sup> In accordance with the Habitat Regulations

natural light into these living areas. No other boundary treatment has been suggested to me. In the absence of any objective noise assessment to the contrary, prepared by a suitably qualified professional, landscaping would likely have no meaningful attenuating effect on noise. Given the close proximity of the path and some of the car parking spaces, thus vehicle engines, doors shutting and general noise and disturbance due to people using the path, this would be unduly disruptive to use of the terraces.

17. A new area of grass in the west corner of the site could be used for recreational purposes. While this could be for resident use only, it would not be accessed directly from Nos 1, 4 or 7 or be apportioned to any of these flats. Communal use of this space by all residents would not allow private activity of the sort described above. I appreciate that existing residents of Bilbao Court may not have access to private amenity space, but that does not justify omitting satisfactory provision in new development in accordance with the Council's current adopted development plan.

#### Existing residents

18. A narrow secondary window to a habitable room in each of the 3 flats in the west (side) elevation of Bilbao Court, nearest to the site, would face towards the proposed block of flats, separated by approximately 12.5m. However, the small window size and this distance combined would have an appreciable ameliorating influence on perceived and actual overlooking in perpendicular views from opposing facing windows in the proposed development. Other new windows, further to either side, would be at an angle and restrict the extent of view so would not be intrusive.
19. The new windows would, in any event, be to bedrooms, bathrooms and (although open-plan living areas) kitchens or to stairways, not main habitable living or dining rooms. Subject to a suitable condition, bathroom windows could be obscured glazed with only opening top fanlights. Views from these other windows are likely to be transient in nature. The potential for overlooking would thus be limited.
20. Taking all of the above into account, while I find that there would be no harm to the living conditions of these existing residents of Bilbao Court with regard to privacy, there would be significant harm to the living conditions of the future residents of flat Nos 1, 4 and 7 with regard to external amenity space, privacy, noise and disturbance. Accordingly, the proposal would not fully comply with LP Policies LHW4 and E8. These policies include that development should provide for the privacy and amenity of its occupants, including private open space appropriate for the needs of residents and avoid unacceptable general amenity impact from noise.

#### *Character and appearance*

21. The rows of single storey flat roof garages form a perimeter to most of the site and are not overly prominent. The backs of some are more conspicuous and appear as a tall, continuous wall along the elevated roadside boundary of the site facing Vigo Road, returning along part of Bilbao Court. On one side of the garages a block of three-storey flats form a row facing Vigo Road. This large expanse of built form is raised above the pavement level but set well back from the road behind a wide grass verge. Opposite is a narrower grass verge and lay-bys with pairs of semi-detached two-storey houses set back at an angle to

the road on lower ground. On the other side of the garages, behind a row of tall mature trees, is a playground and some low, mainly flat roofed school buildings. There are some smaller individual roadside trees and front garden shrubs and hedgerow. The contrast in type and layout of residential development along each side of this part of Vigo Road, and sense of openness and spaciousness along this stretch of road corridor, is locally distinctive.

22. The floorplan of the proposed block of flats would be at right angles to Vigo Road with main aspects west and east. In overall scale and massing it would be broadly comparable to the block of flats facing Vigo Road and elsewhere in Bilbao Court. While some of the ground floor elevations of the building would appear similar in siting and scale to some of the garage 'wall', and replace this mundane feature in the streetscene, there would be a significant increase in vertical built form on the site, including at one end facing Vigo Road.
23. However, its narrow side (end) elevation and hipped roof slope would limit visual presence in perpendicular views from the road and maintain gaps on both sides, especially to the west. From this direction the row of tall trees would screen a significant part of the building in longer views. Although more of it would be revealed in shorter views, most of this long front elevation would rapidly recede in-depth away from the road and be seen next to the block of flats in Bilbao Court facing Vigo Road. From the other direction, while it would project forward of the building line of this existing block of flats, closer to the road, it would still be a significant distance from the road. Most of this long rear elevation would be screened by the existing block of flats, with the forward part appearing, in effect, as a continuation of it, framed at the roadside edge by the taller trees behind.
24. The narrow side (end) facing Vigo Road would be articulated by windows including a dormer (albeit single pane width and few in number), brick banding and variation in external materials. While not a front or principal elevation, it would nonetheless not be bland or featureless and similar in these respects to the equivalent part of the block of flats facing Vigo Road that also faces London Road. Moreover, this end of the building would be observed in most views in the context of each longer front and rear elevation. In addition to similar brick bands and external materials, these parts of the building would also be articulated by insets to the footprint and elevations, variation in eaves and main ridge levels and numerous windows and doors.
25. Albeit not as extensive as elsewhere in Vigo Road or Bilbao Court (including historically, but which no longer exists) there would nevertheless be external areas within the site which could be meaningfully landscaped, including around the building. There would be sufficient space for suitable street trees or shrubs comparable to that in Vigo Road. In this respect, a suitable landscaping scheme could be secured by a planning condition.
26. The proposed block of flats would, therefore, be compatible in type and layout with the flats in Bilbao Court and, overall, be high quality in design and external materials. It would consolidate in a positive way the contrast in the pattern and sequence of residential development along either side of this part of Vigo Road. While the footprint of the proposed building would occupy a relatively limited proportion of the site, the scale and massing of built form would be significantly greater than that which exists on it. However, taken in

its surroundings, the building would not appear overly dominant or incongruous or, therefore, have an overly negative effect on openness and spaciousness along the road corridor itself. The proposal would, as a result, be satisfactorily assimilated into this context and as a result maintain local distinctiveness.

27. Taking all of the above into account, I find that the proposed development would not cause harm to the character and appearance of the area. Consequently, the proposal would comply with LP Policies E1 and E2. These policies include that development should be high quality in design and local distinctiveness and integrate with, respect and complement the character of the area in terms of layout, appearance, scale, materials and building styles. It should also not detract from the dominance of, or interrupt important views of, key features and ensure that existing and proposed landscaping enable it to positively integrate into the landscape character of the area.

#### *Car parking*

28. As I understand it, the garages were part of the development of Bilbao Court, intended for residents of the flats to park their cars. The appellant suggests the garages are now vacant and not fit for purpose, so no longer serve the parking needs of residents and as such are redundant. At my site visit I saw that the garages are in reasonable external condition but did not appear to be in active use for parking. Most have been fenced off which prevents vehicular access, including to most of the courtyard.
29. Albeit as a requirement for new development, the Highway Authority<sup>7</sup> considers that the garages are too small for vehicle parking against current standards. This is consistent with supporting text in LP paragraph 9.14 and the Council does not dispute this. In this respect, I have no reason to find otherwise. Nonetheless, the Council considers that the garages, or the courtyard, could still be used for some parking.
30. A small number of cars could be parked in the courtyard without interfering with turning or access. However, using the garages would depend on the car owning preferences of existing residents and would have to be smaller cars, so there is no certainty in this regard. I have not, anyway, been directed to any adopted Council development plan policy that requires (replacement) car parking (garages or spaces) that is not otherwise required to meet the needs of the proposed development. There is also no evidence to explain how the garages were formerly associated with Bilbao Court or to confirm any planning mechanism that made the garages or the courtyard available to residents, and still does, or to control the size of residents' cars. Andover Town Council considered that there would be insufficient parking for the existing flats but no apparent resident of Bilbao Court has commented on the application or appeal, including therefore in relation to loss of the garages.
31. In these circumstances, even if the garages or the courtyard was fully accessible to existing residents, it seems to me that there would be little likelihood of their widespread use to park cars.
32. There are off-street car parking areas elsewhere within Bilbao Court and aside from some yellow lines, most of the cul-de-sac is free from parking restrictions. A significant number of existing residents cars could be conveniently parked by

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<sup>7</sup> Hampshire County Council

these means. There are also a number of unrestricted on-street parking spaces in lay-bys nearby in Vigo Road. Although many of these spaces were well used at the time of my visit, which was during and after the afternoon primary school children collection time, this intensity of parking activity is transient in nature. There is no compelling evidence to suggest that some existing residents using this parking would have an adverse impact on the safety and function of the highway network or be unduly inconvenient to residents living in other roads, including because I saw that many of those properties have individual off-street parking.

33. The proposal includes on-site car parking to the required standard to meet the needs of future residents and visitors. Future residents could, anyway, conveniently access local facilities and services by walking, cycling or bus and this would be likely to reduce reliance on the private car. The development would, therefore, be unlikely to significantly increase pressure on car parking off-site, if at all.
34. Taking all of the above into account, I find that in this appeal the Council has not demonstrated that the proposal needs to provide replacement car parking on the site for existing residents of Bilbao Court. Consequently, the proposal would comply with LP Policies T1 and T2. These policies include that parking should be provided in accordance with the Council's adopted standards and be well designed and located so as to be convenient for users, unless there is low demand for parking or parking off-site is appropriately controlled, having regard to its impact on the highway for all road users and use of sustainable transport modes.

### **Other Matters**

35. I appreciate that the proposal is a revised scheme further to earlier unsuccessful applications. However, the Council made the decision that it did for the reasons that it did. I have considered the appeal on its planning merits.

### **Planning Balance**

36. The appellant asserts that the Council could not demonstrate a five year housing land supply (5YHLS) from 2021. The Council has not addressed this matter either way. However, even if the Council does not have a 5YHLS and the extent of any shortfall was marked, in this appeal the application of policies in the Framework that protect areas of particular importance (an SPA and SAC) provide a clear reason for refusing the development. Accordingly, by virtue of footnote 7, Framework paragraph 11 d) is not engaged. The presumption in favour of sustainable development does not apply where, as in this case, development is likely to have a significant effect on a habitats site, unless an appropriate assessment has concluded that it will not adversely affect the integrity of the habitats site.
37. In terms of benefits, the provision of 9 two-bedroom flats would make a modest contribution to housing supply in the Borough. It would also add to the stock of this size of home. This would be aligned with objectives of the Framework to significantly boost the supply of homes and meet the needs of people with specific living requirements. The social, economic and environmental benefits associated with constructing and occupying the flats are factors which, commensurate with the modest scale of the proposal, carry moderate weight in the scheme's favour. The Framework requires that I give

substantial weight to the value of using suitable brownfield previously developed land within settlements for homes and great weight to the benefits of using suitable sites within existing settlements for homes.

38. The site is not in the Andover Conservation Area nor covered by any other historic, landscape or ecological designation. The proposal would have a satisfactory means of access and not generate unacceptable levels of traffic. It would provide satisfactory internal living conditions for future occupants, sufficient cycle parking and appropriate arrangements for refuse and recycling storage and collection. The absence of harm or compliance with the Council's development plan and the Framework in these regards are therefore neutral factors in my decision.
39. However, while the Framework also recognises that small and medium sized windfall sites and efficient or effective use of land, especially under-utilised land and buildings, can make an important contribution to meeting housing requirements, it also seeks to conserve the natural environment by protecting sites of biodiversity value and minimise impacts on biodiversity. It sets out that if significant harm to biodiversity cannot be avoided or adequately mitigated, then planning permission should be refused. The Framework also seeks to achieve well designed places with development that functions well, with a high standard of amenity for future users, otherwise should be refused.
40. The proposal would conflict with the Council's relevant development plan policies in both respects. While the LP is more than 5 years old it is still broadly consistent with these aims of the Framework, including to balance meeting housing needs with these other objectives of sustainable development. Accordingly, I give substantial weight to each of these considerations which weigh significantly against the proposal.
41. Consequently, notwithstanding that the benefits would be aligned with the Framework the adverse impacts of the proposed development would nonetheless outweigh the benefits.

### **Conclusion**

42. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
43. For the reasons given above I conclude that the appeal should not succeed.

*Robin Buchanan*

INSPECTOR