
Appeal Decision

Hearing Held on 15 May 2019

Site visits made on 14 & 15 May 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2019

Appeal Ref: APP/B9506/W/18/3203501

The Silver Hind, Station Road, Sway SO41 6BA

- 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 Taylor Grey Homes Ltd against the decision of New Forest National Park Authority.
 - The application Ref 18/00092, dated 4 February 2018, was refused by notice dated 19 April 2018.
 - The development proposed is demolition of public house (including manager's flat) and outbuildings; erection of 2no. dwellings.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Since planning permission was refused, the appellant has provided a bat survey¹ in an attempt to address the 4th reason for refusal relating to the absence of such evidence and a consequential lack of certainty surrounding potential effects on protected species.
3. Following the hearing the appellant has submitted a Unilateral Undertaking making a payment towards the mitigation of potential adverse effects on European nature conservation sites. I shall return to these matters later in my decision.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of neighbouring residents with regard to outlook and privacy;
 - The effect on highway safety with regard to parking provision;
 - The effect on the provision of community facilities;
 - The effect on local employment opportunities; and

¹ David Leach Ecology Ltd (June 2018) Silver Hind, Station Road, Sway, Lymington, Hampshire: Bat Survey

- Whether, with particular regard to marketing and viability, the site would be capable of providing community facilities or employment opportunities in the future.

Reasons

Character and appearance

5. The built environment around the appeal site is characterised by an informal collection of dwellings. There is little unifying architectural style and there is a wide variety in building sizes. Post Cottage which neighbours the site is particularly narrow and of simple design, but from my own observations at the site visit does not appear to be particularly representative of the area generally.
6. There are numerous trees which give the area a verdant appearance with gaps between the buildings contributing to a sense of spaciousness. That said, there are numerous examples along Station Road of buildings having been built very close to their neighbours, although most such examples retain clear gaps to one side of the building. The overall density is visually higher in the area around the station, of which the appeal site is part.
7. The pair of dwellings proposed would be built close together and close to the site boundaries. However, whilst the Sway Village Design Statement (VDS) 2013 indicates that new development should seek to maintain generous plot sizes, a gap would be retained alongside the site between Plot 1 and Post Cottage due to the presence of an access that serves Springfield to the rear. Plot 2 would be set back on the site, broadly in line with adjoining Wildwood and this would retain a general widening in the street scene at this point. Accordingly, I do not find that the overall density or size of the buildings would be harmful or lead to a conflict with Policy DP9 of the New Forest National Park Core Strategy and Development Management Policies DPD 2010 (CS), which requires that development densities must be informed by consideration of the character of the local area.
8. The pitch of the roofs would be such that the large tree on the rear boundary of the site could continue to contribute to the street scene and it would retain its garden setting. However, this tree, that would overhang a substantial part of the proposed garden area, particularly for plot 2, could be under pressure for substantial pruning if it would lead to significant shading for future occupiers.
9. There remains dispute between the Local Planning Authority (LPA) and appellant as to whether the submitted tree reports² adequately address potential shading impacts from the tree in accordance with BS5837:2012 "Trees in relation to design, demolition and construction. Recommendations". The shading diagrams provided only appear to indicate the potential effect on direct light to a specific point at the rear of plot 2. This may be a worst-case scenario, but they do not give a clear picture of the likely shading to the overall garden areas. They are, therefore, attributed limited weight in my assessment of this issue.

² Mark Hinsley Arboricultural Consultants Ltd. (February 2018): Trees at: The Silver Hind, Station Road, Sway, Lymington, SO41 6BA: Tree Survey, Arboricultural Impact Assessment and Arboricultural Method Statement Heads of Terms; and Mark Hinsley Arboricultural Consultants Ltd: Statement of Appeal regarding the LPA Reason for Refusal No. 3 – The Silver Hind Station Road, Sway.

10. I accept that shade can be a desirable component of outdoor living space and may become more important due to climate change. Future occupiers are likely to desire a balance between shade and direct light. The tree is also deciduous and therefore the resultant shading would likely be dappled, not a total block on sunlight and not present throughout the year. However, given the relative positions of the tree and garden areas, and from my own observations at the site visit, I find that significant shading to the garden of plot 2 would occur for substantial parts of the day, which would lead to an oppressive environment.
11. I understand that the tree has existed for over a century alongside residential accommodation at the site. The proposed dwellings would also be further away from the tree and its root protection areas than the existing building. However, even in the site's current configuration, there is an area of garden space, roughly that proposed for plot 1, that would be far less shaded. The totality of that space would not be available following sub-division, with little unshaded space left for plot 2.
12. Whilst living alongside trees is a part of life in the New Forest and may well be valued by many residents of Sway, that is not to say that all future residents of the site when faced with extensive shading would share that view. At the hearing I heard that there is continuous pressure to prune trees from residents who are unhappy with the effects of shading. My attention has been drawn to two other trees in Sway where the LPA have confirmed Tree Preservation Orders. However, having viewed these trees, the relationships with the host dwellings did not appear directly comparable to the current proposal.
13. Whilst it would appear to me that the LPA would retain some ability to control pruning if it would be harmful to the tree or its contribution to the area, my above findings in respect of shading indicate that such may be difficult to resist if the appeal proposal were to go ahead. I, therefore find that there may be significant pressure to prune the tree in the future. In turn, such works could harm the tree, in conflict with those aims of CS Policy CP2 that seek to protect features of the natural environment, and the significant contribution that it makes to the verdant character and appearance of the area.
14. Turning to the detailed design of the houses, given the lack of architectural unity, the general architectural style and choice of materials would not be harmful. The proposed boundary treatment would largely retain the existing appearance and so have a neutral effect. However, the proposals include internal parking facilities in the form of a garage at plot 2 and an open car port sitting below first floor accommodation, at plot 1. The latter would be close to the site frontage which, along with its projection forward of plot 2, would make it prominent in the street scene.
15. The parking arrangement, whilst minimising the number of cars parked in the forecourt area, is a particularly suburban design solution. Indeed, the VDS and New Forest National Park Design Guide Supplementary Planning Document 2011, as well as CS Policy CP8, specifically seek to avoid the 'suburbanisation' of the area, partly through the use of low key garaging, detached or to the side of properties. Whilst there are some examples of integral garaging, particularly at neighbouring Wildwood, it is not a common feature of the area. I note that there is a considerable amount of suburban style development in Sway as a whole, but this is not the prevailing character of the part of the village around

the appeal site. The parking arrangement does not, therefore, respect the semi-rural character of the area and will appear incongruous in the street.

16. At the hearing the Local Planning Authority (LPA) confirmed that the proposal would not affect the setting or significance of the listed Forest Heath House opposite the appeal site and from my own observations, I agree. However, this does not mean that the character and appearance of the area generally would be preserved and so does not lead me away from my findings in respect of this issue.
17. In light of my findings in respect of the approach to parking and the potential future harm to the tree at the rear of the site, I find that the proposal would harm the character and appearance of the area. It would, therefore, conflict with those aims of CS Policies DP1 and CP8 that seek to ensure that development respects the character and distinctiveness of the area, particularly through avoiding a gradual suburbanising effect within the National Park.

Living conditions

18. Plot 1 would be sited close to the boundary with the neighbouring property. However, the affected boundary is with the access drive to Springfield and not an area of garden for any neighbouring properties. Whilst Post Cottage is a small property and the access to Springfield is fairly narrow, it would afford sufficient separation so that the proposal would not be overbearing on the outlook from Post Cottage or its garden. I do not find that the simple presence of a building would lead to a perception that a neighbour was overlooked, but I turn now to the proposed positioning of windows.
19. Plot 1 would contain some windows facing towards Post Cottage which itself has windows facing towards the site. As such, there is potential for some intervisibility between the two dwellings from the rooflights and windows to proposed bedroom 1, two bathrooms, and the stairwell. However, I saw at the site visit that there is already overlooking in a direct line between an existing bedroom rooflight at the Silver Hind and a window in the side of Post Cottage. As such, a loss of privacy would not occur.
20. Both proposed dwellings would include rear windows facing towards neighbouring properties. However, the distance to the main garden areas of those neighbours would be sufficient to avoid any harmful overlooking. The LPA's officer report raises some concerns about effects arising from an increase in activity at the site. However, at the hearing, the LPA confirmed that would not be sufficient to result in a harmful impact.
21. Therefore, I do not find that the proposal would harm the living conditions of neighbouring residents. As such, there would be no conflict with those aims of CS Policy DP1 that seek to avoid visual intrusion or overlooking.

Highway safety

22. The proposal would provide two off-street parking spaces for each dwelling. The LPA's Development Standards Supplementary Planning Document 2012 (DSSPD) indicates at Annex 1 that the proposed development should provide three parking spaces per dwelling. There is also no dispute that the Local Highway Authority expects spaces to be 3m wide.

23. At the hearing the LPA accepted that the alleged deficiency in the width of the spaces may have resulted from measuring the spaces between the entrance piers. The appellant confirmed that it would be possible to drive between those piers, beyond which the spaces widened to allow passengers to open doors. As such, I can accept the appellant's suggestion that the guideline width is required within the spaces, rather than the entrance to them, and that the overall dimensions of the spaces are sufficient. There is, however, a conflict with the required standard in terms of numbers of spaces.
24. I understand that there is often congestion in this part of Sway and there may have been previous accidents involving vehicles reversing out of sites in the vicinity. I was told at the hearing that many railway customers park in Station Road and that Sway was the largest New Forest Village without an off-road car park, which limits parking opportunities for residents and patrons of local facilities.
25. At my site visit, I witnessed traffic waiting to proceed around parked cars. I can appreciate how this can be particularly problematic for large vehicles such as busses and cause uncertainty for pedestrians crossing the road. Combining these issues, I can understand why there may be safety concerns in terms of the current operation of the highway network and also why the VDS includes a recommendation to solve the village's parking issues. There is no substantive evidence that any redevelopment of the appeal site should play a part in resolving this wider situation, but it should not exacerbate it.
26. The site is very close to Sway railway station. The DSSPD at paragraph 2.2.2 indicates that reduced parking provision may be acceptable in certain circumstances, such as where there is relatively good accessibility by public transport. As such, even though the dwellings would have 4 bedrooms, this would likely reduce the requirement for vehicles to be parked at the site. At present, the site provides limited off-street parking for customers. I was told at the hearing that the busiest time would usually be from mid-afternoon onwards and it was undisputed that the highest parking demand for a dwelling would likely be in the evening.
27. The proposed timing of peak demand would, therefore, be similar to the existing situation. Given this, the current lack of off-street parking provision at the site, and the characteristics of the location, I find that there would not be a significant increase in on-street parking demand.
28. The proposal would make use of an existing access and, from my on-site observations, would not appear to require any alteration to the current on-street parking provision. The Council has no particular concern about visibility and, indeed, the Local Highway Authority has not objected in that regard.
29. In light of the above factors, I find no substantive evidence that the proposed parking provision would put significant undue pressure on on-street parking in the locality. Therefore, it would not exacerbate any existing shortcomings that may exist in the local highway network or harm highway safety. As such there would be no conflict with the aims of CS Policy CP19 that seeks to promote safer access within the National Park.

Community facilities

30. It is not clear whether the Silver Hind should be considered a public house or a restaurant and bar, but there is no dispute that it has been acting as a gathering space for members of the community for some time. It is not listed as a named facility in the VDS, and CS Paragraph 7.15 that lists examples of community facilities does not mention restaurants. However, the list in the CS is not a closed list and the VDS provides a snapshot in time rather than a definitive list of community uses. Furthermore, the Framework, at paragraph 83 relating to rural service provision, also lists various community facilities in a non-closed list that includes meeting places.
31. In the past, the building has been in solely residential use and the current use is relatively recent. That said, I was told at the hearing that the current use post-dates the closure of a public house opposite the site and to some extent has fulfilled that function for the community since. Therefore, regardless of the lawful use, and notwithstanding that only a relatively small proportion of total village residents may visit, I find that the Silver Hind should be considered a community facility.
32. I understand that there are a number of other licenced premises in Sway. Of these, the Hare and Hounds public house appears to be the most similar facility to the Silver Hind. Whilst the Hare and Hounds is close to the homes of a number of village residents, it is located at the edge of the settlement. As such, it would not contribute to the general focus of facilities and community activity around the appeal site in the same way as the Silver Hind. I, therefore, find that the function provided by the Silver Hind would not be adequately met by other facilities in Sway.
33. CS Policy CP10 indicates that the loss of community facilities will be prevented where they contribute to the sustainability of local communities. Given its role and location within the settlement, I find that the Silver Hind does make some contribution to the community. Its loss would therefore conflict with the aims of Policy CP10. I understand that other facilities may have been allowed to be lost despite consideration by the LPA against Policy CP10. However, I have limited information about those other scenarios and the particular circumstances of each case must be considered on their individual merits. I am not, therefore, led away from my conclusion that the proposal conflicts with the development plan in this regard.

Employment opportunities

34. Following the closure of the restaurant element of the business, there are now few people employed at the site. It is not, therefore currently making a significant contribution to local employment opportunities, but historically numbers have been higher. Whilst I understand that the appellants have previously experienced some difficulty recruiting local people, with most employees coming from outside the area, the site has, and to some extent still does, provide employment opportunities. Therefore, I find that it should be considered as an employment site.
35. CS Policy CP15 states, unconditionally, that existing employment sites will be retained throughout the National Park. The proposal is, therefore, in conflict with this policy. Any such loss would result in some harm to employment opportunities, albeit that at the present time this harm would be limited.

Marketing and viability

36. Having injected a significant amount of private capital into the business, the current owners now wish to retire. Consequently, the property has been marketed and I was told at the hearing that following a break, it continues to be on the market at the present time.
37. The marketing activity has generated little serious interest. This may, in part, be due to the lack of on-site parking and limited residential accommodation at the site. A previous decision of the LPA to refuse permission to extend the limited living accommodation³ may well have contributed to prospective purchasers' reluctance to proceed. I note that the present owners have witnessed the downfall of many local businesses over the years and that there are other vacant commercial premises in the locality with better parking provision than the Silver Hind. Whether or not such space is comparable, and despite general and targeted marketing, there would appear to be little commercial interest in the site as business premises.
38. It has been said in the representations and orally at the hearing that there is a local community organisation that may wish to purchase the site and operate a similar business therefrom. However, I understand that discussions have been particularly slow and, whilst they may now be able to produce a business plan, there is no substantive evidence of a firm commitment to proceed at this time. I, therefore, attach limited weight to this prospect and find no compelling evidence that a future buyer is likely.
39. I was told by the current owners at the hearing that the restaurant element of the business has continually made a loss, as it had done for the previous owners. They opined that restrictions placed by the LPA preventing the use of the rear decked area for outside seating have contributed to this situation. I acknowledge that in general terms people's social habits may have changed, affecting the viability of public houses and the like across the country. I also understand that, whilst the Silver Hind has accommodated certain community events, regular footfall may be limited and that it is difficult to maintain a business on the basis of irregular social activities or occasional busy trading nights.
40. That said, I was also advised at the hearing that following closure of the restaurant, the bar currently sustains itself financially. Indeed, the current owners have had to continue to trade in this way in order to service a loan against the property, so there is no certainty that a full closure is imminent.
41. Accordingly, the evidence indicates that some form of business may be viable at the site and would be capable of providing some form of community use and employment space in the future. I, therefore, attribute the difficulties that have been faced in terms of both running the business and attempting to dispose of it, limited weight.

Other matters

42. There is no dispute that Sway is an appropriate location for new housing. In light of the very restrictive policies regarding development elsewhere in the National Park, and the support offered by the Framework for small and medium sized sites, the delivery of two dwellings is a benefit of moderate weight.

³ LPA Ref: 16/00842

43. I understand that there may have been previous complaints regarding the use of the site and potential for noise disturbance. In this regard dwellings may be a quieter neighbour to the surrounding residential uses. However, there is no substantive evidence of ongoing noise disturbance problems so any benefit that may arise in this regard receives only limited weight.
44. At the hearing, the LPA indicated that the appellant's bat survey has confirmed that bats would be unlikely to be affected by the proposal. There is no evidence of any likelihood of other protected species being present at the site. I, therefore, find that no harm to protected species or a consequential conflict with CS Policy CP2 insofar as it relates to protected species at the site would arise.
45. A planning obligation has been received undertaking to make a payment in respect of mitigation towards potential adverse effects on the integrity of European Nature Conservation Sites. However, whether or not the obligation is justified and an appropriate mechanism for securing such a payment, it only provides mitigation and so its existence is neutral in the planning balance.
46. The LPA, in their appeal statement, have outlined that the two statutory purposes of the National Park are to conserve and enhance the natural beauty, wildlife and cultural heritage of the New Forest; and to promote opportunities for understanding and enjoyment of the special qualities of the area by the public. There is no particular evidence of any conflict with these purposes and given that the site is within an urban area, I do not find one. Similarly, and notwithstanding my findings in respect of the first main issue, I find that the landscape and scenic beauty of the National Park would be conserved. This, too, is a neutral consideration.
47. My attention has been drawn to the emerging New Forest National Park Local Plan 2016-2036. The plan is at an advanced stage, having been subject to examination. However, the aims of the policies relevant to this appeal are very similar to those of the existing development plan. Therefore, nothing in the emerging plan leads me away from my above findings.

Planning balance

48. I have found that the proposal would cause harm to the character and appearance of the area. It would also lead to a harmful loss of community facilities and some limited harm to employment opportunities. It would conflict with the development plan in respect of these matters.
49. I have found no harm in respect of the effect on living conditions or highway safety. This lack of harm is neutral in the planning balance and the proposal remains in conflict with the development plan considered as a whole.
50. Weighed against the harm is the benefit to housing supply. However, the moderate weight that I have afforded this combined with the weight that I have attributed to all other considerations, does not indicate a decision other than in accordance with the development plan.
51. If I were minded to grant planning permission, I would have to undertake an appropriate assessment under the Conservation of Species and Habitats

Regulations 2017 in respect of European Nature Conservation Sites⁴ that may be affected. However, as I am not, any potential impacts will not arise.

Conclusion

52. For the reasons given above I conclude that the appeal should be dismissed.

M Bale

INSPECTOR

⁴ The New Forest Special Protection Area; and the Solent and Southampton Water Special Protection Area.

APPEARANCES

FOR THE APPELLANT:

James Cain MRTPI – Planning Base Ltd
Ross Fisher – Fisher & Associates Architectural Practice
Kevin Perris – Taylor Grey Homes Ltd
Carol Cottingham – Co-owner, The Silver Hind
Andrew Cottingham – Co-owner, The Silver Hind

FOR THE LOCAL PLANNING AUTHORITY:

Liz Young – Planning Officer, New Forest National Park Authority
Nik Gruber – Senior Tree Officer, New Forest National Park Authority
David Illsley – Planning Policy Manager, New Forest National Park Authority

INTERESTED PERSONS:

Cllr Stephen Tarling – Chairman Sway Parish Council
Mark Parker
Gary Gates
Tony Wade

DOCUMENTS SUBMITTED AT THE HEARING:

- 1 Complete list of 13 suggested conditions
- 2 Appellant's agreement to the imposition of pre-commencement conditions
- 3 Letter from TL Smith (ref 2/TLS/SC8A), David Shores & Co Chartered Accountants
- 4 Solent Recreation Mitigation Partnership (SRMP) Definitive Mitigation Strategy, Explanatory Note – April 2019, New Forest National Park Authority
- 5 New Forest National Park Development Standards Supplementary Planning Document (2012) Paragraphs 6.1-6.4.3.