



Appeal Decisions

Site visit made on 8 July 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2019

APPEAL A

Appeal Ref: APP/B1740/W/19/3224446

Land of Sandle Lodge, Main Road, Sandleheath SP6 1PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Jamie Ward, Healthy Developments Ltd against New Forest District Council.
 - The application Ref 18/11607, is dated 29 November 2018.
 - The development proposed is erection of 3 detached and 6 semi-detached new homes within the curtilage of the existing Sandle Lodge (identified in the Local Plan as area "SAND1") with associated access, parking, public open space and drainage facilities.
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APPEAL B

Appeal Ref: APP/B1740/W/19/3224460

Land of Sandle Lodge, Main Road, Sandleheath SP6 1PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Jamie Ward, Healthy Developments Ltd against New Forest District Council.
 - The application Ref 18/11608, is dated 30 November 2018.
 - The development proposed is erection of 5 detached new homes within the curtilage of the existing Sandle Lodge (adjacent to land identified in the Local Plan as area "SAND1") with associated access, parking, etc.
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Decisions

1. The appeals are dismissed.

Application for costs

2. Applications for costs in connection with both appeals were made by the appellant against the Council. These applications are the subject of separate Decisions.

Procedural matters

3. The appeals arise from the Council's failure to determine the applications within the prescribed period. The Council's appeal statements set out reasons why the applications would have been refused. They relate to alleged conflicts with the development plan in terms of the location of the site and type of housing

proposed, effects on the character and appearance of the area and effects on ecology. I have had regard to these reasons in reaching my decision.

Main Issues

4. The main issues are:

- (i) the effect of the developments on the character and appearance of the area;
- (ii) Whether the site is an appropriate location for housing, with regard to the development plan and affordable housing needs;
- (iii) the effect of the developments on ecology, with particular regard to European Nature Conservation Sites ('European Sites'); and
- (iv) Whether any other material considerations, in particular the delivery of housing, might indicate a decision other than in accordance with the development plan.

Reasons

- 5. The part of the sites, closest to the road, is allocated for development in the New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management 2014 (SADM) under policy SAND1. The policy identifies a broadly L shaped area of land, specifically to provide for local housing needs in accordance with Policies CS12 and CS15(b) of the New Forest District (outside the National Park) Core Strategy 2009 (CS).
- 6. The Appeal A site is closest to the main road through Sandleheath and incorporates the allocated site and some land beyond. The Appeal B site would share the access from the highway but proposes housing beyond the allocation on land outside the settlement boundary.

Character and appearance

- 7. The two adjoining sites are part of the land currently associated with Sandle Lodge, a large Georgian house, and have the appearance of a paddock. A line of mature trees separates the land from the main road through Sandleheath and from here the land slopes downwards. The existing roadside boundary makes a contribution to the verdant character and attractive rural fringes of Sandleheath, but the remainder of the site is largely screened from view and makes a limited contribution to the character and appearance of the area. As such I find that it is not fundamental to the landscape setting of the settlement.
- 8. The wider landscape is gently rolling. The site is not exposed and boundary trees and hedges mean that it is well contained. At my site visit I could not identify any public viewpoints other than the main road from where development would be particularly visible. The site allocation indicates an acceptance of some change in landscape character and the appearance of the area along the main road. From this baseline position, I find that no landscape harm would arise.
- 9. Whilst the surface water drainage facilities would necessitate some change to the shape of the land and may have an engineered appearance, they would not be prominent, being incorporated into an existing dip in the landscape. The works would not be clearly visible from the road or elsewhere.

10. I note that the drainage scheme has been designed to accommodate the two phases of development, with appeal B extending significantly beyond the allocated site. It may well be that a smaller solution could be deployed if appeal site A were developed in isolation. However, even if I were to find appeal B unacceptable the suggested drainage solution for appeal A by itself would not cause any demonstrable landscape harm.
11. The architecture in Sandleheath is varied. There is a notable amount of development from the Victorian and Edwardian eras and an extensive use of red brick within these dwellings. However, there are other dwellings that reflect the time in which they were built, finished in a variety of materials. The Council has suggested that the architectural detailing should reflect those Victorian and Edwardian properties, a number of which are close to the site. However, based on my own observations at the site visit, if an historically derived architectural approach is to be used, I do not see any compelling reason why this period should be favoured over another when the settlement is considered as a whole.
12. The highway design would have a fairly standard estate-type layout. There are a number of less clearly defined, semi-rural accesses and shared spaces around Sandleheath that contribute to the settlement's somewhat informal character and appearance. However, there are also pockets of more suburban development, most notably Old Brickyard Road and Elms Close broadly opposite the site with formal, kerbed footways and standardised highway layouts. Whilst it may be possible to design an alternative and less imposing solution, especially if Appeal A were considered in isolation, given the immediate context I find that the highway design proposals would not have a harmful urbanising effect.
13. The Council has raised some concerns about the use of gated accesses and the poor integration that this could create between future residents. However, whilst they are not universal, there are examples of other similar gated access around Sandleheath and so their presence would not be uncharacteristic or at odds with the character and appearance of the area. In any case planning conditions could be used to prevent their installation and so it would not form a reason to dismiss the appeal.
14. The Council have suggested that the allocated site was expected to be delivered at a higher density, with smaller housing including terraces and the public open space alongside the road. However, neither SAND1 nor its supporting text sets out this expectation. There are smaller dwellings within the settlement, but based on my observations, this is by no means universal and the type and scale of housing would not appear at odds with the existing settlement pattern. Therefore, whilst it might not have been demonstrated that a smaller scheme, contained entirely within the SAND1 allocation could not be achieved, that does not make the proposed developments, individually or together, harmful in character and appearance terms.
15. That said, Policy SAND1 does explicitly require provision of a landscape buffer on the southern boundary of the site. The ability to provide a landscape boundary is shown on the proposed layout plan for the appeal A site and, if it were permitted in isolation, further details could be sought by planning condition. If both sites were permitted, the existing boundaries could also be

strengthened with further planting. Given the limited public views, I do not find that this detail is critical to the acceptance of the scheme in respect of this main issue.

16. With regard to the above, and the New Forest District Council Housing, Design, Density and Character Supplementary Planning Document 2006, I find that there would be no harm to the character and appearance of the area. The proposals would, therefore, comply with those aims of CS Policy CS2 and parts of the National Planning Policy Framework (the Framework) which seek to ensure that development is of a high quality that respects the character, identity and context of the area's towns villages and countryside.

Location, affordable housing and development plan policy

17. The housing for the Appeal B site would be outside the defined settlement boundary, where the appellant accepts new housing is not permitted. Appeal B, therefore, is in clear conflict with the development plan.
18. The housing component of the Appeal A site would be provided within the SADM Policy SAND1 allocated site and within the settlement boundary. Accordingly the site is an appropriate location for housing. The public open space and drainage facilities would be outside although there is no particular evidence before me that this type of development should be resisted outside development boundaries.
19. However, the SAND1 site is allocated specifically for development to meet local housing needs. CS Policy CS12 identifies that such sites are required to meet affordable housing needs in certain locations and the Council has provided substantive evidence that there is still a need for affordable housing in the locality. CS Policy CS15 indicates that at these sites, 70% affordable housing should be provided. The absence of affordable housing puts Appeal A into conflict with the development plan.
20. The appellant maintains that the Appeal A scheme is not viable with an affordable housing contribution. Whether or not that is the case, the Framework indicates that affordable housing should not be provided on sites that are not major development. Appeal A does not propose major development and, given the age of Policy SAND1 and the inconsistency between it and the Framework, I attach greater weight to the policies of the Framework. Notwithstanding the identified affordable housing need within the area, that indicates a decision otherwise than in accordance with the development plan in respect of this issue and I find that the Appeal A site is an appropriate location for open market housing.
21. I note the Council's concern that the proposal has been split across 2 applications in order to avoid an affordable housing contribution. However, in light of my differing findings in terms of compliance with local and national planning policy, I find no compelling evidence that I should consider them as one single proposal. I, therefore, find no reason that Appeal B should be required to deliver affordable housing.

Ecology

22. The Council's appeal statement indicates that harm to on-site ecological interests can be satisfactorily mitigated through planning conditions in respect of Appeal A. However, the Council's ecologist has objected to the Appeal B

- scheme on the basis of impacts on the site boundary hedgerow. Given that the proposals include the retention of the hedgerow, there is no clear evidence as to why mitigation would be impractical or undeliverable. As such, I find no substantive evidence that there would be harm to ecological interests at either of the appeal sites.
23. However, there is no dispute that the developments would lead to increased visitor pressure on nearby European sites¹. It could also lead to increased phosphates entering the River Avon catchment through sewage. In combination with other plans and projects such could adversely affect the integrity of the European sites. Appropriate Assessment (AA) under the Conservation of Habitats and Species Regulations 2017 must therefore be undertaken, which I have done on a proportionate basis, based upon information provided by the Council.
24. The Council has set out a mitigation strategy in the New Forest District Council Mitigation Strategy for European Sites Supplementary Planning Document (SPD). The SPD requires mitigation in the form of infrastructure and non-infrastructure related habitat projects. This could be in the form of direct provision of new areas of open space (SANGS) or through financial contributions towards enhancement projects to existing public open space and recreational walking routes. The non-infrastructure element includes measures such as increased ranger services and access management measures (SAMM).
25. Natural England has confirmed that an AA can confirm that in cases where avoidance and mitigation measures are limited to collecting a funding contribution towards these measures in line with the SPD, then an AA can conclude that there will be no adverse effect on the integrity of the European sites. There is no evidence in this case that additional mitigation is required.
26. Planning obligations have been provided in this case seeking to make payment to the Council to secure mitigation. However, the submitted obligations are in the form of Unilateral Undertakings (UU). As such, the obligations do not bind the Council to spend the contribution on the required mitigation. I note that another Inspector² has recently accepted a UU to secure similar obligations, but I do not know the full scope of evidence before him that enabled the conclusion that appropriate mitigation could be secured.
27. I further note the clauses in the obligations before me that the appellant is relying on the Council to act reasonably, properly and diligently in exercising its discretion and discharging its functions in relation to the deed and that the deed is given on the basis that the Council uses the SAMM contribution to mitigate the impact on the European Sites.
28. However, that is not a categorical assurance that such mitigation would happen at an appropriate time. That is not to suggest that the Council will not comply with the clauses outlined above, but I am the competent authority in respect of these appeals and I need certainty that the mitigation will occur and in a timely manner.

¹ The New Forest SAC, SPA and Ramsar sites, Solent and Southampton Water SPA & Ramsar site, Solent & Isle of Wight Lagoons SAC, Solent Maritime SAC, River Avon SAC, SPA and Ramsar sites and the Dorset Heathlands SAC, SPA and Ramsar sites.

² APP/B1740/W/18/3198347

29. As an alternative, the Council has suggested that a negatively worded condition could be imposed requiring the developer to submit a proposed mitigation scheme for approval prior to the commencement of the development. I find that such a condition would leave more uncertainty over the likely mitigation proposals than the submitted UUs. As competent authority, I must be able to assess the particular mitigation proposals before making a decision on the appeal. Such cannot, therefore, be left to planning conditions.
30. As I cannot be certain that mitigation would be delivered at an appropriate time I, therefore, conclude that the proposals would lead to harmful effects on the European sites. Such would bring them into conflict with those aims of CS Policy CS3 which requires development to protect and enhance sites of recognised importance for nature conservation.

Material considerations

31. The Council cannot currently demonstrate a 5 year supply of deliverable housing land. However, given my findings in respect of ecology, following paragraph 177 of the Framework, the presumption in favour of sustainable development outlined at paragraph 11 of the Framework does not apply.
32. Notwithstanding this, the provision of additional housing, where there is a recognised, significant shortfall would provide a clear benefit. I give this substantial weight. It may also be that allowing Appeal B alongside Appeal A could generate sufficient revenue to provide some affordable housing on the site. However, the appellant maintains that full policy compliance would still be unviable and so the affordable housing contribution would remain modest. Therefore, this benefit is only of moderate weight.
33. My attention has been drawn to Policy 4 of the emerging New Forest District Council Local Plan Review 2016-2036 Part 1: Planning Strategy which proposes to identify Sandleheath as a main village where small to medium scale development can take place. I understand that this plan has been submitted for examination, but I have limited evidence about its current status or the extent to which there may be any unresolved objections to Policy 4. Therefore, whilst this further suggests that the site could be an appropriate location for additional development, I attribute this matter only limited weight.
34. The environmental and healthy living credentials of the proposed development are laudable. However, they do not provide a compelling reason to depart from the development plan. I, therefore, attribute these matters only limited weight.
35. I note the appellant's concerns that various consultees may have been encouraged to object to the applications. However, I have determined the appeals on the basis of the evidence before me and I am not led away from my other findings.

Planning balance

36. Whilst I have found that Appeal A conflicts with SADM Policy SAND1, material considerations dictate that it would still be an appropriate location for open market housing. However, my concerns surrounding the effect on European sites are decisive in this case and bring it into conflict with the development plan as a whole. It also means that policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the

development proposed. Accordingly, material considerations do not indicate a decision otherwise than in accordance with the development plan.

37. Turning to Appeal B, there is a clear conflict with the development plan in terms of the location of development. As with appeal A, my concerns surrounding the effect on European sites present a further conflict with the development plan. It also means that policies in this Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. In the absence of the presumption in favour of sustainable development, the other material considerations are of insufficient weight to outweigh the conflict with the development plan.

Conclusion

38. For the reasons given above, the appeals are dismissed.

M Bale

INSPECTOR