



Appeal Decision

Site visit made on 8 May 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2019

Appeal Ref: APP/B1740/W/18/3218900

13-14 St Thomas Street, Lymington SO41 9NA

- 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 Andbury Properties Ltd against the decision of New Forest District Council.
 - The application Ref 18/10699, dated 18 May 2018, was refused by notice dated 31 July 2018.
 - The development proposed is the erection of 2 dwellings, re-opened pedestrian access from St Thomas St, and associated amenity space.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Andbury Properties against New Forest District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The site is within influence of the New Forest European Sites and the Solent Coastal European Sites (the SPAs) which are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not an issue raised by the Council, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SPAs. As such, it is necessary to consider this matter as a main issue.

Main Issues

4. The main issues are therefore:
 - the effect of the proposed development on the integrity of the SPAs; and,
 - whether the proposed development would preserve or enhance the character and appearance of the Lymington Conservation Area.

Reasons

New Forest European Sites and the Solent Coastal European Sites

5. Last year the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate

Assessment (AA) rather than at the screening stage¹. This responsibility now falls to me within this appeal.

6. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European sites. The New Forest and Solent Coastal European Sites are designated as such as they provide feeding grounds for internationally protected populations of overwintering waders and wildfowl. Both are used for public recreation. There is no dispute between the parties that it cannot be ruled out that the proposal, when considered alone or cumulatively with other schemes, would have significant effects on the features of interest of the SPAs due to the increased recreational use. I have no reason to disagree with this conclusion.
7. I may consider any conditions or other restrictions which could secure mitigation of this harm. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of the Council's Mitigation Strategy Supplementary Planning Document (the SPD). This strategy requires financial contributions from developments and allocates detailed and costed infrastructure and non-infrastructure projects to proposals dependent on their scale and location. In this case the infrastructure requirements relate to new areas of open space and the enhancement of walking routes, and the non-infrastructure schemes comprise increased ranger services.
8. The main parties agree that the mitigation can be delivered pursuant to a negatively worded planning condition. The suggested condition is inherently flexible and relies on the allocation of funding and the identification of projects at a later date. The projects would be from those listed within the SPD or may alternatively consist of undefined land within the appellant's control, to be allocated as a Suitable Alternative Green Space (SANG). As the mitigation is therefore currently undefined, this approach does not allow me, as the competent authority, to ascertain the delivery of appropriate, scheme specific, sufficiently secured mitigation at the decision stage. I am therefore unable to favourably conclude my Appropriate Assessment.
9. It is also clear that a condition should only be used in this way in exceptional circumstances in the case of complex and strategically important development where there is clear evidence that the delivery would otherwise be at serious risk². Although I note that Inspectors have taken a different view based on the specific merits of other schemes elsewhere, there is no evidence that guidance set out within the PPG would be met in this case.
10. As such, I must conclude that, following Appropriate Assessment, the proposal would cause harm to the SPAs without clear and certain mitigation. Therefore, the scheme would conflict with Policies CS3 and CS25 of the New Forest District Council Core Strategy (adopted 2009) (NFCS) and Policy DM3 of the Local Plan Part 2 Sites and Development Management (2014) (LPP2).

Character and appearance

11. The appeal site incorporates two historic rear plots associated with Nos 13 and 14 St Thomas Street within the town of Lymington. It is within the Lymington Conservation Area (CA), the significance of which is derived from its retained

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

² Paragraph: 010 Reference ID: 21a-010-20140306

medieval street system and layout of properties within a network of historic narrow and deep plots, many of which were set out as burgage plots to plan the growth of the town. I therefore have duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. As heritage assets are irreplaceable, any degree of harm requires clear and convincing justification.

12. The Lymington Conservation Area Appraisal (LCAA) identifies that rear areas, such as the appeal site, are of particular significance and have experienced a degree of piecemeal infill development in the C20. Many are connected to the main streets via a number of alleyways, which provide a degree of intrigue and permeability between spaces.
13. Owing to its position within the CA, the site undoubtedly has a degree of heritage value. However, although the external boundaries remain in their historic position, they are now formed of an assortment of modern treatments, such as timber fencing. Buildings which once stood within the site have been demolished and the central dividing boundary has been removed, compromising the legibility of the two distinct plots. Consequently, the site's heritage value has been degraded, and it now has an expansive scale and openness incongruous with the narrower, more densely developed and complex plots within the area. Therefore, although I understand the Council's desire to protect the remaining value of the historic plots, I do not share the view that the openness of the site in its current form contributes positively to the CA.
14. The proposed dwellings would be of a similar scale and massing to other buildings located subserviently behind the main frontage on to St Thomas Street. The dwellings would be concentrated at the west side of the site in a narrow and linear arrangement with associated garden space and pathways alongside to the east. I consider this to be a sound approach which, regardless of any modest oversailing of the notional boundary, would provide enhanced legibility of the historic plot division compared to the current situation.
15. The scheme picks up on the detailing of both the historic properties to the north and the modern housing to the south. The buildings in the immediate context are characterised by a varietal appearance and design, which includes the large, utilitarian structure which has been erected at the adjacent site. Given these circumstances, the buildings would sit comfortably within this diverse built environment. Further, the introduction of a new passageway would be a positive aspect of the proposal, consistent with the LCAA. The future subdivision of external space could be managed through a condition.
16. The Lymington Local Distinctiveness Supplementary Planning Document (SPD) recommends that buildings be progressively lower towards the rear of plots, which would not be the case here. However, I note from the site history that the design approach relates to the need to protect the living conditions of neighbouring occupants. Further, due to their orientation to the east and generally modest scale, the dwellings would not compete with the main frontage properties. As such, I do not consider it necessary in this instance to rigidly conform to the guidance within the SPD in this regard.
17. I therefore conclude that the proposed development would preserve the character and appearance of the Lymington Conservation Area. The proposal would accord with the heritage and design aims of Policies CWS2 and CS3 of the NFCS, Policy DM1 of the LPP2 and the Framework.

Other Matters

18. I have had regard to representations made about access, safety, biodiversity, the construction phase and living conditions, but these matters do not alter my findings against the main issues.

Planning Balance and Conclusion

19. I note that the Council cannot currently demonstrate a five-year supply of land for housing. However, Paragraph 177 of the Framework makes it clear that the presumption in favour of development does not apply where a proposal is likely to have a significant effect on a SPA.
20. The dwellings would make a contribution to reducing the housing shortfall in the District through the reuse of Previously Developed Land in a location where services are easily accessible without private transport. They would do so without harm to the character or appearance of the CA. There would also be a small and time limited economic boost during the construction phase. These are social, environmental and economic benefits which weigh in favour of the scheme. However, considering the international importance of the SPA designation, and my responsibilities as competent authority in this regard, these benefits do not outweigh the harm that I have identified.
21. For the reasons given above, and taking into account all matters raised, I find that the proposal would conflict with the development plan when read as a whole. There are no other considerations, including the Framework, that outweigh the conflict. I therefore conclude that the appeal should be dismissed.

Matthew Jones

INSPECTOR