
Appeal Decisions

Site visit made on 17 June 2019

by Andrew Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 05 September 2019

Appeal A Ref: APP/B1740/W/18/3217972

Perhaven, Barton Common Road, Barton-on-Sea BH25 5PR

- 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 AJ Developments against the decision of New Forest District Council.
 - The application Ref 18/10124, dated 22 January 2018, was refused by notice dated 8 August 2018.
 - The development proposed is three-storey block of 10 flats; bin store & cycle store; parking; demolition of existing.
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Appeal B Ref: APP/B1740/W/18/3217984

Perhaven, Barton Common Road, Barton-on-Sea BH25 5PR

- 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 AJ Developments against the decision of New Forest District Council.
 - The application Ref 18/11249, dated 12 September 2018, was refused by notice dated 7 November 2018.
 - The development proposed is demolish existing building and erect 8 no 2 bedroom flats with parking, bin & cycle stores.
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Decisions

1. Both appeals are dismissed.

Preliminary Matters

2. As set out above, this decision relates to two appeals. The appeals relate to the same site and a similar proposal. Appeal A is for a building comprising 10 flats, whereas Appeal B is for a smaller building comprising 8 flats. As the schemes are so closely related, to avoid duplication I have dealt with the two appeals together in one decision.
3. The description of Appeal A was changed prior to the Council's determination of the application as the scheme was amended to include a reduction to the number of units. I have used the revised description as it more accurately describes the amended proposal upon which the Council based its decision.

Main Issues

4. The main issues are:

- a) Whether there would be likely to be a significant effect on the internationally important features of the New Forest European Site¹ and the Solent Coastal European Site², in combination with other plans and projects,
- b) The effect on the character and appearance of the area,
- c) The effect on the living conditions of neighbouring occupiers, with regard to noise, disturbance and privacy, and
- d) The effect on highway safety, with regard to parking provision.

Reasons

European Sites

5. The Council has indicated that the appeal site is within close proximity to the European Sites set out above. These cover a range of habitat types and interests. The Council establishes that the conservation objectives of the sites can be summarised as the maintenance of the habitats in favourable condition, with particular reference to any dependent component special interest features for which the land is designated. The proposals are for new dwellings and would therefore result in a permanent increase in people on the site. This could have a significant adverse effect on protected habitats and interests of the nearby European Sites because persons residing at the appeal site could access the protected areas for leisure purposes, which may lead to disturbance of the habitat of ground nesting birds, overwintering waders and wildfowl. On this basis, either proposal would be likely to have a significant effect, either alone or in combination with other developments, through its urbanising effect.
6. As part of the Council's Appropriate Assessment (AA), Natural England (NE) as the Statutory Nature Conservation Body was consulted. The Council state that NE raised no objection to the proposal. NE suggest that in cases where avoidance and mitigation measures are fairly straightforward and limited to collecting a contribution that accords with the Council's Mitigation Strategy for European Sites 2014 (MS), provided no other adverse impacts are identified, the AA can conclude that there would be no adverse effect on the integrity of the European Sites.
7. The MS sets out the measures and projects which will be implemented to mitigate recreational impacts of new development. Full mitigation of impact requires each residential scheme to contribute to a combination of both infrastructure and non-infrastructure related habitat mitigation projects, achieved through the provision of sites of alternative natural green space (SANG) and through the provision of site access management and monitoring measures (SAMM).
8. The Council has suggested a negatively worded condition to secure contributions. The Council has produced evidence of recent appeal decisions

¹ Comprising the New Forest Special Area of Conservation, Special Protection Area and RAMSAR site

² Comprising the Southampton Water Special Protection Area, RAMSAR site, Solent & Isle of Wight Lagoons Special Area of Conservation and Solent Maritime Special Area of Conservation.

where this has been accepted³, however the Council also produced evidence of recent appeal decisions⁴ where such an approach was not considered to be acceptable.

9. I accept that the condition suggested by the Council does not state that a planning obligation or some other legal agreement would be required. However, for a small scheme such as this it is highly unlikely that the appellant would be able to provide their own SANG space, that future residents could use that would be away from the European Sites. It is therefore very likely that such a negatively worded condition would result in the appellant entering into a planning obligation to secure the necessary mitigation.
10. The Planning Practice Guidance advises that the use of a condition worded in this way is unlikely to be appropriate in the majority of cases, except in the case where there is clear evidence that delivery of the development would otherwise be at serious risk⁵. I have no evidence before me to suggest this to be the case. In addition, in the absence of a properly executed legal agreement, there is no satisfactory mechanism in place that would bind the Council or guarantee delivery of mitigation prior to development. I am therefore not satisfied that the use of such a condition is justified.
11. As such, the mechanism of securing mitigation proposed by the Council is inappropriate, and therefore no means of securing the necessary mitigation has been provided. On this basis the appeals must fail due to the likely significant effect on European Sites, contrary to Habitats Regulations and Policy CS25 of the New Forest District Council Local Development Framework Core Strategy adopted 2009 (CS), and Policy DM3 of the New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management adopted 2014, which together seek to ensure that any necessary mitigation is secured.

Character and appearance

12. The appeal site is located in an area at the edge of the settlement, which faces out towards open land at Barton Common. Properties and plots in the area are very large, and most are set back a considerable distance from the road behind well-established front boundaries. As a result, particularly in the immediate context of the appeal site, existing built form is generally not prominent to view from the road. These characteristics give the area its distinctive spacious and tranquil character.
13. The existing dwelling sits at the western side of the appeal site and has a broad front elevation, with prominent chimneys. However, it has a fairly modest overall scale achieved by low roof forms with eaves that extend down to first floor openings in some areas. It has a pleasant character but, based on the information before me and my site visit, I am not convinced that it is so significant that its demolition would be harmful to the character and appearance of the area.
14. Both proposals would result in the demolition of the existing dwelling and the erection of a much larger building placed more centrally on the site. In terms of the overall design approach, both proposals would be of a design that in broad terms would pick up on the massing, proportions and details of the existing

³ APP/B1740/W/17/3186659, APP/B1740/W/17/3181718 and APP/B1740/W/17/3190270

⁴ APP/B1740/W/18/3193526, APP/B1740/W/18/3198282 and APP/B1740/W/18/3194176

⁵ PPG Paragraph: 010 Reference ID: 21a-010-20190723

building. These would include similar gable widths, roof pitches, prominent chimneys and openings divided up in a traditional manner with mullions and transoms. The massing of either proposed building would be managed well, through the use of forms that are broken by projecting gables, hips and bays. Flat roof areas would not be overly apparent owing to the proposed arrangement of roof forms. Both proposals would occupy a similar position on the site, which would relate comfortably to the position of neighbouring buildings to the west.

15. The scheme proposed under Appeal A would however have a substantial overall scale. The principal elevations would be overly complex with prominent upper storey openings to the front elevation that would increase the perceived scale of the building, and a wide and somewhat squat portion of the building at the west end of the front elevation. This would result in a building that would appear to be over and above the scale of buildings in the area, which although large, generally have the appearance of single dwellings.
16. The scheme proposed under Appeal B, although still much larger than the dwelling currently occupying the site, would be of a reduced overall scale and would have a simpler architectural treatment than that proposed under Appeal A. Upper windows would have a more appropriate and modest scale in the context of openings on the floors below, and the centrally placed front dormer would have a less prominent flat roof.
17. In terms of the depth of the building proposed under Appeal B, I appreciate that the building would be of a scale that would exceed a typical building designed in the arts and craft style, which generally incorporate true building forms without relying on large areas of flat roofs to achieve deep floor plans. However, views of the side elevations would be limited. There would be little opportunity to view the west elevation. Owing to the set back position of the neighbouring dwelling to the east it may be possible to view the side of the building from this perspective more easily, however the main width of this side elevation would not be excessive owing to the set back of the rear facing components.
18. Furthermore, at my visit to the site I was particularly aware of the scale of development underway at Creek House, immediately to the west of the appeal site. At Creek House the scale of the principal building at the front would be substantially increased by the addition of the extra storey. Although I note that this would be set back from the main façade, from more distant views such a set back would not be readily apparent, and it would result in a scale of building that would be comparable with the appeal proposals. A little further west the significant built form of the care home and No 6 Barton Common, which has recently been replaced with a large building divided into flats, are also relevant to the context of the appeal site. These factors are significant and have weighed heavily on my findings on this main issue.
19. The rear of the appeal site is currently mainly laid to garden, with a car port and driveway alongside the western boundary. Laying out a parking area here would change the appearance of the rear of the plot significantly. However, owing to the spacious layout of adjacent plots and the mature intervening boundaries, the effect on the character and appearance of the area would largely be felt from within the appeal site only. Furthermore, the development underway at the rear of the adjacent site involves the erection of two

substantial dwellings with driveways and parking. Additionally, the rear of the appeal site and the plots to the east appear to have been divided off for development in the past. Taking these factors into account, the introduction of a parking area at the rear of the plot, which incorporates planting to break up areas of hardstanding, could not be considered so harmful that it would harm the tranquil character or spacious appearance of the area.

20. The Council refer to the impact of the proposals on the setting of Robin Green and Deepdene, to the north and east of the appeal site respectively. I have no evidence before me to suggest that either property has any statutory protection or is included on a 'local list' where impact on setting may be a material consideration that I should take into account. The Council suggests that Robin Green to the rear of the appeal site is included in the New Milton Local Distinctiveness Supplementary Planning Document 2010, although I could find no such reference in the extracts that were submitted with the appeal. This property appears to be set away from any public views and would not appear to be visible from a public place in the context of the appeal proposals. In terms of Deepdene, this property is set much further back in the adjacent plot and is well screened from views from the road owing to the established and mature vegetation. Taking these factors into account I am not of the view that the character of either building would be harmed by either proposal.
21. Therefore, in summary of this main issue, I find that the overall bulk and scale of the Appeal A proposal would have a harmful effect on the character and appearance of the area. However, I am satisfied that the smaller proposal before me under Appeal B, would be suitably scaled and would have the appearance of a large single dwelling that would relate comfortably to the scale and form of built development in the area. This would maintain local distinctiveness and would not harm the character or appearance of the area, in accordance with Policy CS2 of the CS, which seeks to ensure that new development is well designed to respect the character, identity and context of the area.

Living conditions

22. The use of the rear of the site for parking would increase activity in this area, and unlike other recently developed sites in the area this area of the site is bounded by existing gardens rather than roads. However, owing to the constrained layout of the parking area, vehicle movements would be limited primarily to the manoeuvring of cars into or out of spaces at low speeds. Disturbance from car lights would be minimal owing to the vegetated boundaries around the site and the new planting in the form of hedges or shrubs that would divide the parking areas. As the parking would be for residential units vehicle movements would be likely to be very low during the main part of the night. If the appeal were to succeed, conditions could be used to ensure that the proposed planting is carried out properly, and to ensure that lighting in this area is kept to a minimum.
23. In terms of the opportunity that future occupiers of either proposal may have to look out over neighbouring gardens or into neighbouring properties, even if I take into account the significant level of privacy that occupiers of dwellings in the area currently enjoy, the distances between either proposal and existing dwellings to the north and east would be sufficient to prevent a significantly

adverse impact arising on the living conditions of existing occupiers of these properties.

24. At its western end it would be possible for future occupiers of either proposal to look out towards the closest plot of the neighbouring development. However, evidence provided suggests that the side wall of the neighbouring development facing towards the appeal site would be largely blank, and where openings are fitted, they would be obscurely glazed. Therefore, it would not be possible to look from within either of the proposed buildings into the neighbouring building. Views towards the rear garden of this neighbouring plot from the upper floors of the building at the appeal site would be possible, but these would not be from primary living rooms and would be at a reasonable distance with intervening vegetation, sufficient to avoid significant adverse effects on the living conditions of future occupiers of this neighbouring development.
25. I therefore find that neither proposal would have an adverse effect on the living conditions of neighbouring occupiers, including the future occupiers of the development currently underway at the adjacent plot. It would therefore accord with Policy CS2 of the CS, which seeks to ensure that development proposals do not have an unacceptable effect on existing residents.

Highways

26. With regard to Appeal A, the local highway authority advises that 18 spaces would be required, which is two more than the spaces provided on the proposed plans. The provision of 18 spaces would appear to be necessary as some of the units would be large and the road at the front of the site is not wide enough to easily accommodate a regular overspill of parking. Regular overspill parking on the road would also have an adverse effect on the character of the area. The parking provision set out in the context of this proposal is therefore insufficient.
27. In terms of Appeal B, 16 parking spaces would be provided, which the local highway authority is satisfied would provide future occupiers with adequate parking. Based on the reduced size and number of units proposed when compared against Appeal A I find no reason to take a contrary view. This should ensure that vehicle parking associated with the site would not spill out onto the adjoining highway. Further matters have been raised by the local highway authority, but I have no doubt that these matters could be addressed through an appropriately worded condition were I to allow the appeal, as there is some flexibility in the area at the rear for manoeuvring of an emergency vehicle, and space to accommodate a passing bay on the access drive.
28. Visibility at the site access is shown to be adequate on the submitted drawings. The Council has raised no issue in respect of this and I could find no reason to take a contrary view following my visit to the site. Acceptable visibility would ensure the safety of pedestrian, cycle and vehicle movements at the site.
29. I therefore find that the parking proposed in association with Appeal A would be inadequate, however the parking provision proposed for Appeal B would be sufficient. Whilst I conclude that Appeal A would be harmful to conditions of highway safety contrary to Policy CS24 of the CS, which seeks to ensure that developments secure an appropriate level of parking, this is not the case in relation to Appeal B and I am satisfied that his scheme would not conflict with Policy CS24.

Other Matters

30. The Council is unable to demonstrate that it has a 5 year housing land supply (5YHLS). However, in accordance with paragraph 11 (d) (i) of the National Planning Policy Framework (the Framework) the Policies in the Framework that protect areas of particular importance, which include European Sites, provide a clear reason for refusing the proposals.
31. Additional matters have been raised by third parties relating to protected trees at the site. From the evidence before me, I am satisfied that neither proposal would cause harm to the protected trees, subject to appropriate conditions, were either appeal to succeed.
32. Comments have also been raised in relation to the site's ecological interest, and in particular the likely presence of the very rare grey long-eared bat. Additional survey information would appear to be required in relation to this, however, as the appeals are to be dismissed this matter need not be considered further.
33. Further comments relating to drainage, the impact on adjoining residents during construction and lighting could be dealt with by suitably worded conditions were either appeal to succeed.

Conclusion

34. Although I have found the Appeal B proposal to not cause harm to the character and appearance of the area and to provide adequate parking, and I have found that the living conditions of neighbouring occupiers would not be harmed by either proposal, such matters do not outweigh the failure of either proposal to secure the mitigation necessary to overcome the likely significant effect on nearby European Sites. Therefore, for the reasons above, both appeals should be dismissed.

Andrew Tucker

INSPECTOR