
Appeal Decision

Site visit made on 4 September 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2019

Appeal Ref: APP/Y9507/W/19/3223441
71 Station Road, Liss GU33 7AD

- 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 Mrs C Ashton-Milton against the decision of South Downs National Park Authority.
 - The application Ref SDNP/18/03121/FUL, dated 8 June 2018, was refused by notice dated 25 October 2018.
 - The development proposed is the change of Use of Part of Site from Use Class D2 to Use Class D1 (State Registered Nursery).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Following the determination of the planning application and my consideration of this appeal the Council has adopted the South Downs Local Plan 2019 (Local Plan). The Local Plan supersedes the policies of the East Hampshire/South Downs Joint Core Strategy and the saved policies of the East Hampshire Local Plan Second Review. The appellant has had opportunity to comment on the most up to date policy position. I have determined the appeal with regard to the development plan at the time.

Main Issues

3. There are two main issues. These are a) whether the proposed development would be at an unacceptable risk of flooding; and b) the effect of the proposed development on the living conditions of existing neighbouring occupiers with specific regard to noise disturbance.

Reasons

Flood Risk

4. The appeal site is located in flood zone 3 as defined. This is a high level of risk, in this case, from the adjacent River Rother. Policy SD49 of the Local Plan defers to the national policy situation on development in areas at risk of flooding, referring to the Sequential and Exception Tests (ST and ET). The aim of the ST, according to the Framework¹ is to steer development towards areas at the lowest risk of flooding. Where there are reasonably available sites

¹ The National Planning Policy Framework 2019

- capable of accommodating it. If this is not possible, then the ET has to be applied. There are two elements to the ET which, in summary, comprise ensuring that the given development is safe for its lifetime without increasing flood risk elsewhere and, where possible, reduce risk overall and for the development to provide wider sustainability benefits.
5. Whilst the above is the case in most situations, I am mindful of paragraph 164 of the Framework which sets out that applications for some minor development and changes of use should not be subject to the ST or ET. There are footnotes giving more detail. The relevant one in this case confirming that changes of use would not require application of either tests unless they seek to change the use of land to caravan, camping, chalet uses or mobile/park homes.
 6. Notwithstanding this, paragraph 164 and its accompanying footnote set out that the requirements of a site specific Flood Risk Assessment (FRA) should be met. A FRA should be provided for all development in flood zones 2 and 3.
 7. I note the appellant's evidence that the existing building has removable flood barriers on two of the rear external doors that lead into an area used for children to play outside. I was able to see these at the time of my site visit. There is also mention of the business being part of the government's flood line alert service. Regular fire drills suggest that the building can be evacuated in a short time and there seems to be higher ground available a short distance to the front of the building. Children's time outside appears to be strictly limited and it seems the owners of the building are arranging for work to be done to improve defences along the river bank.
 8. These factors give me some comfort that there is at the very least awareness and executable action in a flood event. I do have some concerns however as to what existing and proposed protection measures are based on. In the absence of a FRA I am not aware of the flood depths in various events and thus if the existing barriers would be up to the job of sufficiently protecting the building. Said barriers are also only on two of the external doors. The proposed works to the bank may be successful but it seems that this may be out of the control of the appellant to secure through a planning permission. In any case, I am not aware of a design or exact scheme (in the context of any formal work on actual risk that would assist) in place to be certain that it would be successful.
 9. A sufficiently detailed FRA would be able to ascertain the actual risk, what measures would be reasonable and proportionate to minimise it and set out a warning and evacuation plan in a flood event. Ultimately, it would also serve as a tool to be able to draft planning conditions, ensuring any development is carried out in accordance with its findings.
 10. Put simply, in the absence of the requisite detail in regard to flood risk I cannot be sufficiently certain that the proposed development would be acceptable in a flood zone. Both Policy SD49 and the Framework explicitly require a site specific FRA. What I have set out above are the reasons as to why. In regard to this main issue therefore, the proposed development would be at an unacceptable risk of flooding. Such that it would be contrary to Policy SD49 and the Framework which, together, seek to both direct development away from areas at risk of flooding and where it cannot be, ensure that it is suitably protected from the effects of flooding.

Living Conditions

11. The appeal scheme seeks planning permission for the change of use of the ground floor and part of the first floor to the nursery use. In the remainder of the first floor there are a number of small self contained residential flats. A similar commercial/residential arrangement applies to the adjoined neighbour. There are therefore residential uses directly above and to the side of the proposed nursery use. There are further dwellings arranged around the cul de sac of Riverside Close, on the opposite side of the river.
12. The crux of the Council's concerns in respect of this main issue is that the operation of the nursery would give rise to noise disturbance to neighbouring occupiers. The Council state that it is the particular type of noise emanating from the premises that would be an issue, noise that would be associated with children's and staff voices, instruments playing and outdoor activities.
13. I agree that, under some circumstances, the type of noise emanating from the nursery use could be the source of unacceptable disturbance. That is of course depending on your point of view. There are however a number of factors specific to the business and its location that form a context.
14. The appeal site, and the residential uses that abut and adjoin, are also in very close proximity to a railway line. Noise and vibration from what appears to be to be a busy commuter line is fairly regular throughout the day. The station is directly after a level crossing where Station Road meets it. Due to the regularity of services, it would be safe to assume barriers are down often. This creates queuing traffic outside of the premises which is the source of additional noise. I noted at the time of my visit some trains are overly long for the station platform so they block the road crossing when they are stationary. Thus traffic queues at the barriers seems to be static for noticeable periods of time.
15. The immediate area is not solely a residential one. There are commercial premises close by which attract visitors. Occupiers of nearby dwellings will therefore be used to a degree of activity. The size of the business, and specifically the number of children it can cater for, is constrained by the extent of the building given over for the nursery use which is far from substantial. This suggests a small enterprise and would not therefore produce the level of noise associated with a larger operation or a school.
16. Occupiers of dwellings arranged around Riverside Close are offered some degree of protection from noise due to the distance between their gardens and the appeal premises which includes the river embankments and some extensive landscaping cover.
17. I agree with the view that a lack of objection to a given development does not automatically mean that the decision maker therefore is not tasked with assessing and indeed giving appropriate weight to its effect in whatever regard is relevant. It is nonetheless correct in my view to attach some limited weight to the fact that support for the scheme has been expressed from occupiers living in flats close to the premises who do also state that the noise produced from its operation has not amounted to a problem. It is also noticeable that such comments come from the operation of the business during the summer months when outdoor areas are more likely to have been used.

18. Putting all of these factors temporarily aside, the nursery use is intended to operate during the day and not at night time when there is a greater expectation for more peace and quiet. I am mindful of the proposals put forward by the appellant as part of their noise management and it strikes me that it would be eminently possible, subject to agreement, to impose mutually acceptable hours of operation by condition. Based on the evidence, it appears to be the case that the previous and extant youth club use had operating hours that extended later into the evening.
19. Taking all of the above into account, it is my finding that the change of use would not adversely affect the living conditions of existing neighbouring occupiers with specific regard to whether they would be affected by noise disturbance. As a consequence, and with regard to this main issue, there would be no conflict with Policy SD5 of the Local Plan which, amongst other things, seeks to ensure that regard be had to avoiding harmful impact upon, or from, any surrounding uses and amenities.

Other Matter

20. With regard to the background to the appeal scheme it appears that the appellant submitted a notification for prior approval for the change of use. There remains some disagreement between the parties as to the reasons for the Council having refused the notification but the submission is not before me to determine. The appeal scheme concerns an application for express planning permission which I have considered accordingly based on the evidence.

Conclusion

21. I have found that the proposed development would not give rise to harm to the living conditions of existing neighbouring occupiers but that would not make up for shortcomings in respect of ensuring that it would be acceptable development in an area at risk of flooding. This harm would result in conflict with the development plan and the Framework. Whilst I have had regard to other matters that have been raised, including expressions of support from local residents, it is for this reason that the appeal is dismissed.

John Morrison

INSPECTOR