
Appeal Decision

Hearing Held on 6 August 2019

Site visit made on 13 August 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Appeal Ref: APP/Y9507/W/18/3214126

The Black Fox Inn, Portsmouth Road, Milland, GU30 7JJ

- 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 Mr Harry Lawson of Green Roots Nursery against the decision of South Downs National Park Authority.
 - The application Ref SDNP/18/01138/FUL, dated 27 February 2018 was refused by notice dated 20 August 2018.
 - The development proposed is change of use from Class A4 public house to class D1 children's nursery and pre-school, together with associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The hearing was closed at the venue on 6 August and an accompanied site visit took place on 13 August.
3. The South Downs National Park Authority: South Downs Local Plan ("adopted Local Plan") was adopted on 2 July 2019. The policies cited in the Chichester District Local Plan First Review (1999) are no longer part of the development plan and have no weight. As such, the decision is based on the policies in the adopted Local Plan. These were cited on the decision notice as emerging planning policies.
4. The Authority were granted an extension of time to submit their statement of case. In doing so, they provided additional comments on the appellants grounds of appeal, and a viability report. This formed part of the evidence discussed at the hearing. The appellant had the opportunity to review this evidence prior to the event. In consequence, there was no prejudice arising from the acceptance of this information outside the formal appeal timetable.

Application for costs

5. An application for costs was made in writing prior to the hearing by Mr Harry Lawson of Green Roots Nursery against South Downs National Park Authority. This application is the subject of a separate Decision.

Main Issues

6. The main issues in this appeal are:

- i) Whether or not a safe and suitable access to the proposed development would be achieved;
- ii) Whether or not the loss of the existing public house is justified, with reference to the policies relating to the protection of community use and visitor accommodation set out in the development plan;
- iii) Whether or not the location is appropriate for the proposed development, having particular regard to its accessibility in relation to surrounding built up areas; and
- iv) The effect on the character and appearance of the area, with particular regard to the purposes of designation of the South Downs National Park.

Reasons

Highway Safety

7. The authority did not refuse the development on the grounds of highway safety, and the local highway authority concluded that the development would be acceptable subject to conditions. However, concerns were raised by interested parties in written representations and again at the hearing, where the appellant had the opportunity to respond to the issues raised.
8. The National Planning Policy Framework ("the Framework") seeks to ensure a safe and suitable access to the site can be achieved for all users, where new development is proposed. This is reflected in policy SD19 of the adopted local plan, which seeks to ensure that development demonstrates the continued safe and efficient operation of the local road network. In this case the main end users of the development, pre-school children, are particularly vulnerable as they have little awareness of traffic and its associated dangers. This justifies a precautionary stance towards highway safety on and around the site.
9. The site is located away from built up areas on a busy road with constant traffic running along it, subject to the national speed limit. There is no footpath or cycle route along it, and nor are there any accessible public transport connections. In these circumstances both staff and children would almost certainly access the new facility by car.
10. The appellant envisages that the nursery would provide places for 90 children. The trip modelling, which was informed by nationally held TRICS¹ data indicates that there would be considerably fewer than 90 drop offs at the site in the morning rush hour. However, there is inevitably a degree of uncertainty associated with such trip modelling. As discussed above, this particular site would almost certainly be accessed by car as it is physically remote from any built-up area. In these respects, it differs from the other nursery surveyed at Fair Oak, which informed the predicted parking demand associated with the proposed development.
11. 10 of the 22 proposed parking spaces would be used by staff, which could be reflected in planning conditions. The level of parking provided reflects the standards recommended by the Highway Authority. However, given that 90 children would potentially attend the nursery there is still a risk, particularly at the time of the morning rush hour, that the 12 assigned parking spaces

¹ Trip Rate Information Computer System

provided would be insufficient to serve the amount of cars that would seek to visit the nursery. Were this to be the case, users would be likely to either wait on the road or park nearby.

12. However, the adjacent road is subject to fast moving traffic with no clearly defined on-street parking. Furthermore, the visibility of cars and people moving around on the road outside the site is restricted due to the proximity of a bend in the road, which also intersects with a junction with Milland Lane. Whilst works would be undertaken to improve the visibility around this bend, it was clear to me on inspection that this stretch of road is an unsafe place for parents to be stopping, to drop off and pick up young children.
13. In light of the above, the highway authority acknowledge the need for a travel plan to manage trips to and from the site. This could be required by condition, along with the provision of cycle parking. However, whilst measures such as ride sharing could be imposed on staff, such measures cannot be reasonably imposed on the parents of pre-school children, who would expect flexibility in how and when they access the nursery. Accordingly, even were a travel plan to be agreed along the lines suggested, which could include a car park management plan, there is still an unacceptable risk that there would be insufficient on-site parking when children are being dropped off and picked up from this facility.
14. I appreciate that the nursery has no desire to create a dangerous environment. However, it would have little control over the behaviour of its future customers, particularly when they are pressed for time. Overall, for the reasons given above and even with the agreed planning conditions being imposed, I am not confident that the operation would be carried out in a way that ensures that there is no unacceptable risk of waiting and overspill parking on the adjacent road. Accordingly, given the hazards posed by such an arrangement, a safe and suitable access would not be achieved. The proposal therefore conflicts with policy SD19 of the adopted Local Plan, the purposes of which are set out above.

Loss of existing use

15. There is a dispute between the parties regarding whether or not the proposed nursery use should be regarded as a community use. On this matter, policy SD43 of the adopted local plan is relevant. The supporting text makes clear that community infrastructure facilities include education. A nursery and pre-school use is centred around education. Whilst the proposed nursery would be larger than other facilities recently given consideration by the Authority, it still primarily functions as a community use.
16. Policy SD43 of the adopted local plan states that development proposals that would result in the loss of an existing community facility will not be permitted. This is unless evidence is provided of a robust marketing campaign that clearly demonstrates there is no market demand for the existing use or an equivalent community use. As noted above, education is defined as a community infrastructure facility in the supporting text of the adopted local plan.
17. As the proposal has been marketed and attracted an offer from an equivalent community use, the requirements set out in policy SD43 (part 2(a)) of the adopted local plan have been followed. Accordingly, I regard the proposed development as an equivalent community use and conclude there would be no

loss of an existing community facility for the purposes of this development plan policy. In coming to this view I have also had regard to paragraph 7.230 of the supporting text of the adopted Local Plan. This indicates the aim of the policy is to safeguard existing community facilities from development proposals for non-community uses.

18. As there would be no loss of an existing community facility, there is no conflict with policy SD43 of the adopted local plan, which seeks to, amongst other things, prevent the loss of community facilities. Accordingly, there is no need to come to a finding on whether the existing pub is viable, or whether sufficient alternative facilities are provided in the surrounding area. Furthermore, as the proposal does not comprise new community facility infrastructure, it does not need to meet the tests set out in the first part of policy SD43.
19. The proposal also comprises visitor accommodation in the form of 4 letting rooms. However, the existing building is identified in the Milland Neighbourhood Development Plan (2016-2030) ("Neighbourhood Plan") as a community meeting space. The guest accommodation comprises an ancillary element to the primary use of the facility as a community building. In these circumstances it was appropriate to regard the premises as a community use, rather than a tourism use which triggers different marketing requirements where a change of use is proposed. Accordingly, there is no conflict with policy SD23 of the adopted local plan, which seeks to prevent the loss of visitor accommodation, as the existing building does not principally comprise a tourism use.

Location

20. For the reasons given in the first main issue, it is likely that most trips to these premises would be undertaken by car. However, the existing pub would clearly also generate frequent vehicular trips to the site, albeit at different times of the day. Accordingly, the proposal would be no less accessible or sustainable than the existing community facility on the site. In this respect the effect of the development would be neutral, and there is no conflict with policies SD1, SD19 and SD43 of the adopted Local Plan which require that, amongst other things, development proposals are located and designed to minimise the need to travel.
21. In consequence, given the existing use of the site, the location is appropriate in principle for the proposed development. However, this finding does not overcome the concern set out in the first main issue in relation to access and parking.

Character and appearance

22. As discussed previously, the B2070 is a busy road with constant traffic passing along it. This was apparent at the time of my site visit and was also reflected in the surveys carried out in support of the planning application. The new development would generate traffic along this road accessing the facility but would replace an existing traffic generating use. Considering the scale of the operation and the fact the road is already busy, the overall effect on the character and volume of traffic along this road would be insignificant.
23. Taking these points in to account, there would be no material change to the character and appearance of the area arising from any variation in traffic

movements that follow from this proposal, including in the morning and afternoon rush hour. Accordingly, there is no conflict with the statutory purposes of the National Park, which amongst other things, are to conserve and enhance its natural beauty. Nor is there conflict with policy SD1 of the adopted Local Plan, which shares similar objectives.

Other Matters

24. Notwithstanding my findings on the first main issue, the appellant argues that there would be highway safety benefits to the proposal. The existing access to the site has limited visibility, which would be improved, and a number of substandard parking spaces outside the pub would be removed and vegetation cut back, along with various works to the road. It is further argued that the total number of vehicle trips on the highway network would reduce as the site would be accessed as part of existing trips on the highway network. In these respects, I agree that the development would lead to improvements in highway safety. However, this does not overcome the harm that arises due to the lack of a safe and suitable access given the nature of the proposed use, and the risks this creates.
25. The proposal would facilitate the growth of a business in a rural area, providing new employment opportunities. There is support for this in the Framework, along with the promotion of new community facilities including education facilities. This is also reflected in policy LE.9 of the Neighbourhood Plan, which supports the development of new community buildings which could include nurseries. The site would continue to act as a community facility and meeting space within the parish of Milland. This also weighs in favour of the proposal.
26. However, the considerations that weigh in favour of the development are insufficient to justify the proposal. Whilst the loss of the existing public house is justified, the location is acceptable in principle and there would be no harm to the character and appearance of the area, a safe and suitable access would not be achieved. In consequence, the proposal conflicts with the development plan when considered as a whole and there are no other considerations that outweigh this finding. The appeal should be dismissed.

Neil Holdsworth

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Patrick Barry	Planning Consultant
Colin Lambert MRICS	Valuation Surveyor
Dominic Smith BA (Hons) MCIHT CMILT	Highways consultant
Martin Mc Connell	Estate Agent
Harry Lawson	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Charlotte Cranmer BA MSC MRTPI	Planning Officer
Eric Spencer MRICS	Valuation Surveyor

INTERESTED PARTIES:

Colin Stopher	Local Resident
Maureen Truss	Local Resident
Simon Every	Local Resident

DOCUMENTS SUBMITTED AT HEARING:

1. Plan entitled: Site Access Visibility Splays
2. Plan entitled: Site Access Arrangements
3. Technical Note by i-transport, dated 8 May 2018.