



Appeal Decision

Site visit made on 8 October 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2019

Appeal Ref: APP/B1740/W/19/3233479

Green Lane Works, Fordingbridge, SP6 1HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ancillary Developments Ltd. against the decision of New Forest District Council.
 - The application Ref: 18/11695 dated 4 December 2018, was refused by notice dated 21 February 2019.
 - The development proposed is the demolition of existing buildings and the erection of up to 9 no. residential dwellings, parking, access and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal has been made in outline application. The application form indicates that approval was sought only for access with the matters of appearance, landscaping, layout and scale reserved for future approval. I note that a site plan of the proposed development was submitted with the application for illustrative purposes only. I have dealt with the appeal on this basis.
3. At the time of the Council submitting its Statement of Case the Local Plan Review (LPR) was at the examination stage. From the evidence before me this is still the case. In accordance with paragraph 48 of the National Planning Policy Framework (the Framework) weight may be given to policies in emerging plans according to the stage of preparation of the plan, the extent to which there are unresolved objections to relevant policies and the degree of consistency of those policies with the Framework.
4. Although the LPR has reached an advanced stage, the appellant has submitted objections to Policy 5 'Meeting our housing needs' and Policy 22 'Retention of employment sites and consideration of alternative uses' which, from the evidence before me, remain unresolved. Accordingly, I can only give limited weight to these emerging policies in my determination of this appeal.
5. The Council's first reason for refusal refers to the 2018 version of the Framework. I have had regard to the current version in the determination of this appeal. As both parties refer to this version in their evidence, this has caused no prejudice to either parties' case.

Background and Main Issues

6. The appeal site lies close to and has the potential to affect the designated New Forest European Site and the Solent Coastal European Site, comprising the New Forest Special Area of Conservation (SAC) / Special Protection Area (SPA) / Ramsar site and the Southampton Water SPA / Ramsar site, Solent & Isle of Wight Lagoons SAC and the Solent Maritime SAC; the River Avon SAC / SPA / Ramsar site; and the Dorset Heathlands SAC / SPA / Ramsar site.
7. The main issues are therefore the effects of the proposed development on:
 - the local economy
 - the integrity of designated European nature conservation sites and
 - the character and appearance of the area.

Reasons

The effect on the local economy

8. At the time of my site visit the majority of the units on the site were occupied. Several were being used by a furniture manufacturer, as both operational and storage premises. Other units were occupied by a vehicle repair workshop and as a storage unit for a cycle shop elsewhere in the town. The appellant estimates that 15 people were employed on the site as at July 2019, although some of the units were vacant and it is possible that this number could be increased.
9. The appellant has not advanced a case that the proposal is in accordance with Policy CS17 of the New Forest District outside the National Park Core Strategy 2009 (the Core Strategy) which sets out that all existing employment sites should be kept except for the few small sites identified for release in the Employment Land Review. No evidence has been submitted to indicate that the appeal site has been identified for release and as a result, I consider that the proposal would be contrary to Policy CS17.
10. Notwithstanding that, the appellant has outlined that there are a number of issues with the buildings at the site including the likely presence of asbestos, thermal movement, settlement and rising damp. This has been detailed in the Building Condition Report for Commercial Property. The survey suggests that the cost of the replacement of the external wall cladding, decontamination and cleaning of the existing structures is likely to be substantial. However, no evidence has been submitted to demonstrate that such investment would not be financially viable.
11. Furthermore, no evidence is provided to indicate that the premises are unsuited to their current occupiers – indeed, the extent of occupation of the site by the furniture company and the activity I witnessed during my site visit suggests the opposite. Likewise, the vehicle repair workshop was in active use when I visited the site. Evidence submitted by many of those objecting to the proposed development indicates that these businesses have been in operation for 15-20 years. In addition to the above, I have no evidence that either business is unlikely to continue providing employment and offering the valuable services identified in the evidence from third parties.

12. I have been referred to a previous appeal decision relating to the redevelopment of the site to residential use¹. The Inspector in that decision did not give the potential need for investment in the buildings much weight having determined that the site was capable of providing employment opportunities and seemed to be capable of continuing to do so in the future. Although the national and local policy context has changed since that appeal decision, as no doubt has the condition of the appeal buildings, I too am not persuaded by the evidence that the appeal site could not continue in some form of viable employment use.
13. The Council contend that the Business Needs and Commercial Property Market Assessment (2017) (BNCPMA) undertaken for the Council as part of the evidence base for the LPR states that the commercial property market in the district is characterised by rising take-up, reducing availability and low levels of vacancy. The appellant has challenged the methodology in the BNCPMA and the Employment Sites Quality Assessment, appended to the BNCPMA, in respect of the threshold applied to determine whether a site should be retained in employment use and the specific scoring in relation to the appeal site at the Examination of the LPR. However, I have no evidence that the appellant has challenged the characterisation of the commercial property market in the BNCPMA. This characterisation lends further support to the retention of the appeal site in employment use and I am not persuaded that it is no longer needed for a commercial purpose.
14. The Council has also referred to Policy CS18 of the Core Strategy in its reason for refusal. However, this policy relates to the provision of new employment sites and as I can find no specific reference within the policy to the retention of existing employment sites, only to their redevelopment where suitable for higher-value employment uses, I find no conflict with Policy CS18.
15. The Council contends that the LPR contains policies relevant to the proposed development, in particular policies safeguarding existing employment sites. However, they are not cited in the Council's reasons for refusal and, as I noted above, I can only afford these policies limited weight given the current position with the LPR.
16. Taking all of the above into account, I therefore conclude that the proposed development would have a harmful effect on the local economy and would be contrary to Policy CS17 of the Core Strategy, which seeks the retention of all existing employment sites except those sites identified for release in the Employment Land Review and I have no evidence that the appeal site is identified for release. The aim of Policy CS17 is consistent with paragraph 80 of the National Planning Policy Framework (the Framework) so far as is relevant to this appeal and therefore still carries weight. It would also conflict with Policy CS10 of the Core Strategy, which sets out the spatial strategy for the plan area, including the retention of existing employment and business sites as set out in Policy CS17. The overall aim and approach of this policy is broadly consistent with the Framework and it still carries weight in this regard.

The Integrity of European Nature Conservation Sites

17. The Council has undertaken an Appropriate Assessment which concludes that the proposed development would, in combination with other developments,

¹ APP/B1740/A/01/1068418

have an adverse effect on the integrity of European sites due to the recreational impacts associated with the development. In undertaking a similar appropriate assessment, I agree with the Council's conclusions in this respect.

18. That said, the Council goes on to state that it considers that the adverse effects of recreational impacts would be avoided if the planning permission (in the event that the appeal was allowed) was to be conditional upon the approval of proposals for the mitigation of that impact in accordance with the New Forest District outside the National Park Mitigation Strategy for European Sites SPD or mitigation to at least an equal effect. The Council has suggested a negatively worded condition to achieve this.
19. However, the Planning Practice Guidance (paragraph 21a-010-20190723) advises that a negatively worded condition is unlikely to be acceptable in the majority of cases. Whilst such a condition may be appropriate where there is clear evidence that the delivery of the development would otherwise be at serious risk, eg in the case of particularly complex development schemes, I have no evidence that this is applicable to this proposal.
20. I acknowledge that other Inspectors have taken the view that such a condition is or would be appropriate in relation to other appeals in the New Forest District, including three to which the Council draws my attention². However, the Council has also drawn my attention to three other appeal decisions in which the Inspector considered such a condition to not be acceptable³. Although the Council's proposed condition does not specifically require an applicant to enter into a S.106 Agreement, the Council acknowledges in Appendix 2a of its Statement of Case that such an Agreement is the most likely route for an applicant proposing only a small number of houses as the most practical way of meeting the terms of the condition. Whilst the appellant has given their consent to such a condition, in my judgement such a condition would not accord with the Planning Practice Guidance and I consider that it would not be appropriate to impose such a condition should I be minded to allow the appeal.
21. The Council has been advised by Natural England and the Environment Agency that new development within the catchment of the Hampshire Avon needs to be "phosphate neutral" to ensure that adverse effects on the River Avon Special Area of Conservation do not occur. The Council has ring-fenced up to £50,000 of held CIL funds for a suitable infrastructure project upstream to provide suitable mitigation. Accordingly, there is no further requirement on developments to provide mitigation for potential harmful effects on the River Avon SAC.
22. Nevertheless, in the absence of a planning obligation or any other clear and lawful mechanism before me to secure appropriate mitigation measures for the recreational impacts associated with the proposed development, I conclude that the proposed development would conflict with Policies CS3 and CS25 of the Core Strategy and Policy DM3 of the New Forest District outside the National Park Local Plan Part 2 Sites and Development Management Development Plan Document 2014 (the LPP2). These policies are broadly consistent with the Framework's policies on habitats and biodiversity and development contributions so far as is relevant to this appeal.

² APP/B1740/W/17/3186659, APP/B1740/W/17/3181718 and APP/B1740/W/17/3190270

³ APP/B1740/W/18/3193526, APP/B1740/W/18/3198282 and APP/B1740/W/18/3194176

Character and appearance

23. The appeal site is located in a primarily residential area with some commercial uses within the built-up area of Fordingbridge near the town centre. Residential properties in the area vary in age, size and design. Trees, shrubs and hedges along and visible from Green Lane add to its character.
24. The illustrative layout of the proposed development indicates that it would be possible to accommodate 7 houses and 2 maisonettes on the site with reasonably sized rear gardens. Although the access and parking spaces occupy a significant proportion of the area between the dwellings in the illustrative layout, it does demonstrate the potential for the retention / provision of some landscaping along the site boundaries and within the site. This planting would soften the built development and contribute to the character of the area.
25. The erection of up to 9 dwellings could therefore be accommodated on this site without unacceptable harm to the character and appearance of the area, subject to the layout and provision of landscaping, which would be reserved matters. Furthermore, this would be an improvement on the current situation with the large extent of built form and hardstanding unrelieved by any greenery within the site other than scrubby vegetation in the north-west corner. There is an acceptance in the conclusion of the Planning Officer's Report that the proposed development would result in limited improvement to the character and appearance of the area.
26. I therefore conclude that, based on the illustrative information available, the proposed development would not necessarily harm the character and appearance of the area. It would not therefore conflict with Policy CS2 of the Core Strategy. This policy, amongst other things, seeks to secure development that is designed to respect the character, identity and context of the area's towns, villages and countryside, and contributes positively to local distinctiveness and sense of place. Nor do I find any conflict with the Housing design, density and character Supplementary Planning Document 2006 which I note is not intended to be a design guide.

Other Matters

27. In terms of highway matters, I have noted that the development would provide improved sightlines for the access, a reduction in commercial traffic using the local road network, part of which is located within the nearby Fordingbridge Conservation Area. However, I have no evidence that vehicle movements specifically associated with the employment uses on the site cause any particular highways issues or that the uses cause harm to the living conditions of the occupiers of neighbouring properties.
28. In addition to the above, I have considered the improved visual and physical relationship between the site and the neighbouring residential properties are benefits of the proposed development.

Planning Balance

29. It is common ground that the Council cannot demonstrate a 5-year supply of deliverable housing sites. The appellant refers to an appeal relating to another site within New Forest district in which the Council accepted that it could only

demonstrate a supply of 0.5 years⁴. However, in its evidence, the Council contend that the supply is 2.6 years.

30. The Framework indicates that planning decisions should apply a presumption in favour of sustainable development. For decision taking, where Development Plan policies which are the most important for determining the application are out of date⁵, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. These policies include those relating to habitats sites such as the designated New Forest European Site and the Solent Coastal European Site.
31. Given my conclusions above on the matter of the effect of the proposed development on the integrity of habitats sites, paragraph 175 of the Framework provides a clear reason for refusing the development proposed. Accordingly, even if I was to accept the lower housing land supply figure, and with regard to paragraph 177 of the Framework, the presumption in favour of sustainable development does not apply in this appeal.
32. Furthermore, the proposed development would be harmful to the local economy and conflict with policies in the development plan in this respect. The appellant has drawn my attention to two recent appeal decisions⁶ which relate to the weight to be given to policies that are out of date due to a lack of consistency with the Framework. However, the circumstances in these appeals are not directly comparable to the appeal before me as they relate to policies for the protection of the countryside and are in other local authority areas. I therefore give them little weight.

Conclusion

33. The proposed development would conflict with a number of policies in the development plan. Notwithstanding the acknowledged shortfall in the supply of deliverable housing sites, the proposed development does not benefit from the presumption in favour of sustainable development due to the harm to the integrity of European designated nature conservation sites. This harm also provides a clear reason for refusing the development. Having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, neither the Framework nor any other material considerations indicate that a decision should be made other than in accordance with the policies of the adopted development plan.
34. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Martin Small

INSPECTOR

⁴ APP/B1740/W/18/3198347

⁵ Footnote 7 includes situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

⁶ APP/F4410/W/17/3169288 and APP/W1715/W/18/3194846