The Planning Inspectorate

Appeal Decision

Site visit made on 21 January 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2020.

Appeal Ref: APP/B1740/W/19/3238482
75 Farm Lane North, Barton-On-Sea BH25 7BP

- 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 J Burgess against the decision of New Forest District Council.
- The application Ref 19/10172, dated 6 February 2019, was refused by notice dated 26 April 2019.
- The development proposed is sever land and erect a 3 bedroom detached chalet bungalow with garage and parking. Proposed new access drive.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on the character and appearance of the area and the effect on European Nature Conservation Sites ('European Sites').

Reasons

Character and appearance

3. Farm Lane North has an informal character. Heading along the lane from Highlands Road the dwellings on the left side, which includes the appeal site, tend to be of a greater scale than those on the right. Along much of its length, dwellings are arranged such that they face the lane and although there are differences in architectural style, those smaller dwellings on the right hand side do not appear as anomalous or out of place.

4. From the area around No.71 Farm Lane North to that just past the appeal site, where the lane becomes closed to vehicular traffic, the spacing of dwellings alters. There are wider gaps and, although No.73 faces the Lane, the general arrangement of Nos. 71-75 is more irregular. Mature trees are more visible through the larger gaps between the dwellings, giving this part of Farm Lane North a more spacious character and more verdant appearance. To some extent this is also reflected in the gap between Nos.48 and 46A on the opposite side of the road.

5. That the area of Farm Lane North around the appeal site has a character and appearance that distinguishes it from the remainder of the lane has been identified by previous Inspectors[1]. Whilst those decisions are now of some

[1] Appeal references T/APP/B1740/A/92/209109/P5; T/APP/B1740/A/93/226452/P7; and T/APP/B1740/A/95/248932/P8

considerable age and there have been significant changes to planning policy, there is no substantive evidence that the physical characteristics of the site and its surroundings have substantially changed. Indeed, based upon my own observations at the site visit, the descriptions of the character and appearance of the area in those decisions appear to me to be equally valid today.

6. Two of these appeals were dismissed and both concerned the construction of a new dwelling between Nos.73 and 75 in broadly the location proposed now. The Inspectors were broadly concerned with the loss of openness and the effect that would result to the character and appearance of this part of Farm Lane North. The proposed dwelling would be sited very close to No.75 and result in a distinct visual filling of the gap between it and No.73. As was previously found, the loss of this openness would cause some harm the character and appearance of the area.

7. It may well be that there is no particular dispute around the proposed massing and design of the dwelling, and that its external appearance is suitably responsive to surrounding architectural styles. The Council have also indicated that they do not consider that any particular harm would arise to the living conditions of surrounding residents. However, it is the physical presence of a building in this location that causes harm to the character and appearance of the locality rather than its particular detailing. As such, whilst the National Planning Policy Framework (the Framework) encourages appropriate innovation and change, it clearly requires simultaneous regard to local character and there would be some conflict with its design policies, including Paragraph 127, when read as a whole.

8. I, therefore, conclude that the proposal is contrary to those aims of Policy CS2 of the New Forest District outside the National Park: Core Strategy 2009 (CS) that requires development to respect the character, identity and context of the area's towns, villages and countryside, and contribute positively to local distinctiveness.

European sites

9. The Council has indicated that significant impacts on the integrity of various European sites[2] are likely to arise through greater recreational usage of those sites from increases in numbers of dwellings in the District. The appellant has suggested that the site is not within a sensitive area but this is not substantiated by robust evidence. Rather, the Council's evidence[3] indicates that all development within the development plan area must contribute to the mitigation to avoid adverse effects in combination with other development. Therefore, despite the very limited scale of development proposed, there are pathways that could lead to significant adverse effects. Accordingly, appropriate assessment under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') is required. This I have conducted on a proportionate basis, with regard to the evidence supplied by the Council.

[2] New Forest European Site comprising the New Forest SAC/SPA/RAMSAR site; Solent Coastal European Site comprising Southampton Water SPA/RAMSAR site, Solent & Isle of Wight Lagoons SAC, Solent Maritime SAC.
[3] 'An Appropriate Assessment of the implications of a plan or project on European sites in view of those site's conservation objectives' (Council's appeal statement, appendix 1).

10. The Habitats Regulations Assessment of the Local Plan identified that potentially harmful impacts could arise, in simple terms, from an increased number of residents visiting those sites which are designated for their nature conservation importance[4]. The Council has produced a mitigation strategy to deal with the recreational impacts. This includes new areas of open space, enhancements to existing open space and the enhancement of recreational walking routes alongside increased ranger services and access management measures.

11. The Council has confirmed that Natural England has issued a standard response[5] indicating that, provided that mitigation is secured in accordance with the Council's mitigation strategy, then an appropriate assessment can conclude that the proposal should not result in a likely significant effect.

12. Following on from this, the Council has proposed a condition to secure the appropriate mitigation. However, whilst it may be envisaged that such mitigation will be in accordance with the Council's strategy, the condition would leave room for an alternative. The proposed mitigation is not, therefore, certain and may not have been considered by Natural England as Statutory Nature Conservation Body. As competent authority under the Habitats Regulations, I must have certainty over the mitigation proposed and its efficacy before deciding to grant permission.

13. Furthermore, it is not clear how a developer could comply with the condition without entering into some form of planning obligation. Planning Practice Guidance advises that negatively worded conditions requiring the submission of planning obligations would only be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of development would otherwise be at serious risk. I understand that the Council consider a condition to be a pragmatic and effective way of allowing small sites co come forward and that, collectively, they contribute to the strategic housing needs of the District. However, this proposal is not, by itself, strategically important or complex. Moreover, without knowing the detail of any proposed obligation, as competent authority, I cannot be certain that appropriate mitigation would be secured.

14. In addition to recreational pressures, the Council has also advised that there are existing high levels of nitrogen and phosphorus in the water environment, with evidence of eutrophication at some European sites in the Solent catchment. Although this matter was not raised by the Council at application stage, as competent authority, I must consider the implications of all possible pathways to adverse effects on the integrity of the various European sites.

15. Wastewater from housing is one source of nutrient inputs into the water environment and Natural England have advised that there is currently uncertainty as to whether new housing growth will further deteriorate designated sites[6]. Until this time, adopting a precautionary approach, Natural England recommend that new development achieves 'nutrient neutrality'.

16. In this regard, I note that the appellant considers a precautionary approach to be obstructive and may be tantamount to preventing any development coming

[4] Ibid.
[5] Ibid. - Appendix C
[6] Natural England (June 2019) Advice on achieving nutrient neutrality for new development in the Solent region (Council Appeal Statement – Appendix 7)

forward. However, a precautionary approach must be adopted as for a project to proceed in accordance with the Habitats Regulations, an appropriate assessment must conclude that there is no reasonable scientific doubt as to the effects on the integrity of the European sites in question[7].

17. A number of mitigation measures have been suggested by Natural England, but they accept that it would be challenging for smaller developments to comply[8]. Accordingly, more strategic options are being devised to allow important small site delivery to take place, but details are not yet available. As with the recreational impacts, the Council has suggested a condition that mitigation is agreed prior to any development commencing. However, this does not give me the required certainty at this stage and, in the absence of any detailed mitigation proposals or a timetable for their implementation, I cannot be certain that suitable mitigation is achievable.

18. Therefore, as competent authority, and following appropriate assessment, I cannot conclude with any certainty that the development, in combination with other development, would not lead to significant adverse effects on the integrity of the European sites. Therefore, the proposal conflicts with Policy DM3 of the New Forest District outside the National Park Local Plan Part 2: Sites and Development Management (2014) which seeks to ensure that development, in combination with other development, avoids adverse effects on the integrity of European Sites.

Other matters

19. The proposal would make a contribution to housing supply in the area. It would also provide family housing which, according to the CS is a particular requirement in New Milton. Given the size of the dwelling proposed, it may well be relatively affordable compared to some others in the locality, but it would not meet those definitions of affordable housing set out in the Glossary to the Framework. Nevertheless, the benefits of providing a type of housing appropriate to the needs of the area is a significant benefit and supported by Framework Paragraph 61.

20. The Council's suggestion that it may be able to demonstrate a 5 year supply of deliverable housing land, as required by the Framework, is based upon an emerging development plan. However, even if I were to accept the appellant's argument that a sufficient supply cannot yet be demonstrated, Framework Paragraph 177 is clear that the presumption in favour of sustainable development outlined at Paragraph 11 would not apply in this case by virtue of my findings in respect of European Sites.

21. There is no dispute between the Council and appellant that the proposal would be acceptable in terms of its effects on various matters including highway safety and biodiversity interests at the site. New, high quality housing could also have a lower energy use and less effect on the environment than older housing stock.

22. There could be a number of social and economic benefits that would arise from the provision of an additional home at the appeal site and that it would make an effective use of the land within a location broadly appropriate for housing

[7] Planning Practice Guidance Paragraph Ref ID; 65-003-20190722
[8] Natural England (June 2019) Advice on achieving nutrient neutrality for new development in the Solent region (Council Appeal Statement – Appendix 7)

growth. In this regard, the proposal may well accord with many of the wider objectives of the CS and the Framework, which must be read as a whole.

23. I note that the appellant considers that the Council was unduly influenced by local objections to the proposal. However, whether or not that were the case, I have considered the appeal based upon its particular planning merits, with regard to all material considerations.

Planning balance

24. Some harm would arise in respect of the character and appearance of the area and there would be a conflict with the development plan in that regard. The CS is now over 10 years old and pre-dates the Framework. However, as set out in Framework Paragraph 213, this does not mean that its policies should be considered out of date. Rather, due weight should be given to existing policies according to their degree of consistency with the Framework. The aims of CS Policy CS2 with which I have found conflict are also supported by the Framework and, indeed, I found conflict with the Framework in this regard too.

25. Against this, are the benefits associated with the supply of housing. If I were to accept the appellants position in respect of housing supply these benefits would be of significant weight. However, even if they were to outweigh the harm to the character and appearance of the area, my findings in respect of European sites must be decisive in this case and result in a conflict with the development plan when considered as a whole.

26. Not only do those findings mean that the presumption in favour of sustainable development outlined at Framework Paragraph 11 does not apply, Paragraph 175 explicitly indicates that permission should be refused. When read as a whole, therefore, the Framework does not offer support to the proposal or indicate a decision otherwise than in accordance with the development plan.

27. The appellant has suggested that harm to the character and appearance of the area would not be sufficient to override the right to create a better dwelling for his private and family life, or the peaceful enjoyment of his possessions. However, even if I were to find that the inability to develop land interfered with the rights under the Human Rights Act 1998, the planning system serves to operate in the public interest accounting for all relevant material considerations, in accordance with the law as is necessary in a democratic society.

28. There is no substantive evidence about the appellant's particular family needs and so I attribute their desire to create a better dwelling limited weight. Therefore, given my findings in respect of the appeal, any interference with their human rights would be proportionate in this case and do not lead me away from my earlier conclusions.

Conclusion

29. For the reasons given above I conclude that the appeal should be dismissed.

M Bale

INSPECTOR