
Appeal Decision

Hearing Held on 28 January 2020

Site visit made on 28 January 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2020

Appeal Ref: APP/C1760/W/19/3233403

Land formerly part of Longparish House Estate, South of Upper Mill, Mill House Lane, Longparish SP11 6QL

- 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 Anthony Buckingham against the decision of Test Valley Borough Council.
 - The application Ref 19/01121/FULLN, dated 2 May 2019, was refused by notice dated 5 July 2019.
 - The development proposed is demolition of existing fishing hut and the erection of a replacement hut.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr Anthony Buckingham against Test Valley Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant has agreed that the description of the development on the Council's decision notice should be used for the proposal rather than the term 'bothy' used on the application form. The appellant has also agreed to adopt the revised location for the site set out in the banner heading above rather than Nuns Walk on the application form.
4. The owner of land adjacent to the appeal site has queried the validity of the appeal as it could be construed that the proposed fishing hut would be located on his land rather than on the appeal site due to the scale used on the originally submitted location plan. However, other appeal documents indicate that the proposed fishing hut is to be positioned on the site of the existing fishing hut which is clearly within the appeal site and on land owned by the appellant. The appellant has confirmed this to be the case.
5. Subsequent to the determination of the application, the appellant submitted two additional drawings, 004/E providing an internal floor plan for the proposed hut and 008/A clarifying the location of the proposed hut within the appeal site. The Council is content for these drawings to be included as part of the proposal.

Main Issues

6. The main issues are

- (a) Whether the fishing hut of the size proposed is essential in this countryside location;
- (b) Whether the size and scale of the fishing hut would be harmful to the open rural landscape character and appearance of the area, and
- (c) The impact of the proposal on ground water pollution and biodiversity and whether the fishing hut would satisfy Natural England's provisions relating to new development achieving nutrient neutrality.

Reasons

Whether essential in the countryside

- 7. The existing fishing hut is situated on the northern bank of the River Test to the south east of Longparish. It is set back from the riverbank on a narrow strip of land some 10m wide. A post and wire fence has recently been constructed where this strip abuts the adjacent land holding. A footpath in front of the structure leads north-eastwards around a bend in the river for about 250m to a gated access to a public highway. Signage on the gate confirms that the site is private land and not open to the public. Land around the existing hut is largely characterised by woodland fronting the river. The site is located within Flood Zone 3 on the Environment Agency's Flood Maps which indicates a high risk of flooding.
- 8. For planning policy purposes, the site is clearly located within the countryside. Policy COM2 of the Test Valley Borough Revised Local Plan (2016) (RLP) guides development within and outside of settlement boundaries. It restricts development in the countryside unless it is either 'appropriate' to the countryside (as defined by other policies in the RLP) or it is 'essential' for it to be in the countryside. The parties concur that the proposal would not be classified under any policies 'appropriate' to the countryside. It therefore falls to be considered if the proposal could be regarded as an 'essential' facility?
- 9. Supporting paragraph 5.49 notes that development away from defined settlements is unlikely to meet all elements of sustainable development but recognises that in some cases it is essential for a development to be in the countryside; it cites 'the re-use of buildings' as an example. The paragraph states that "*Any proposals would need to demonstrate that the overall social and economic benefits outweigh the disadvantages of a location which is relatively remote from facilities*".
- 10. The proposal would be a re-use of land rather than of a building. Whilst Policy COM2 does not make explicit reference to the size of a development that may be considered acceptable, the policy's objectives of rural restraint and sustainable development would be undermined if the scale of a single building or the frequency of recreational development were to result from factors that could not reasonably be regarded as 'essential'. The proposed fishing hut would be considerably larger than the hut it is to replace. The parties concur that the existing structure has a footprint of 5.9sqm, the proposed hut an internal area of 23.6sqm and that there would be an increase of 17.7sqm.

11. The justification for the increase in size from the appeal statement is so that the appellant has *"the ability to hold up to two parties a week, of up to 12 people a party (men and women) who will be friends and acquaintances of the appellant for their enjoyment of the river. The proposed replacement fishing hut would provide more suitable modern fishing facilities, offer better weather protection and accommodate basic amenities"*. Reference is also made to the desire to provide secure storage for fishing equipment so that it does not have to be removed after each fishing trip.
12. I accept that it is essential for a fishing hut to be located close to the river. There are examples of fishing huts in similar locations in the wider area including the existing hut at the site. This is open fronted, and I consider it reasonable to provide an enhancement with a lockable door to make the facility secure and to offer better weather protection. Indeed, the Council has referred to a permission recently granted for a private fishing hut elsewhere that has a door and windows¹.
13. However, there is no elaboration on why it is essential for the replacement hut to be large enough to provide seating and amenities for up to 12 people. A structure of this size would offer convenience for secure storage and flexibility regarding the size of fishing parties, but the evidence from the Council and interested parties is that private fishing huts in the wider area tend to be of more modest proportions. Larger facilities open to the public would be regarded as appropriate to the countryside if the requirements of Policy LE18 are met.
14. The appellant indicates a further reason for the size is to allow sufficient space for the preparation of fish including gutting and cooking and points out that the site has no access to a dwelling house where such preparation and toilet facilities could be provided. Whilst preparation and toilet facilities within a replacement fishing hut may be desirable, I am not persuaded that the scale of the development proposed is essential for their provision. Nor does the lack of access to a dwelling justify the scale of the development. The site is not far from Longparish and other settlements; it has not been confirmed that there are no facilities nearby to which guests could retreat to both gut and cook their fish. This would obviate the need for such a large building on site in a remote and unsustainable location. The Council have referred to a local public house offering such a fishing related service².
15. It has not been demonstrated that overall benefits arising from the scale of the proposal and enhanced facilities envisaged would outweigh the disadvantages of a location which is relatively remote from facilities. A fishing hut of the size proposed is not essential in this countryside location. The proposal would thereby be contrary to Policy COM2.
16. Whilst Paragraph 96 of the National Planning Policy Framework (the Framework) encourages new provision of recreational opportunities, this is in the context of an up-to-date assessment of needs and opportunities for new provision. The scale of the proposal would be excessive in relation to this context and site circumstances; the proposal would be contrary to the exhortations on restraint of new buildings set in Paragraph 97(b) of the Framework in relation to a suitable location for recreational provision.

¹ Permission 19/02520/FULLN – Freelands, Fullerton Road, Wherwell.

² The Greyhound at Stockbridge.

Character and appearance

17. The proposed fishing hut would have timber clad walls and a conical thatched roof. Its design, appearance and use of materials would be similar to other fishing huts in the local area, and in this respect would be complementary to the character and appearance of the area. But the scale of the new hut would be considerably larger than that it is to replace. The appellant's figures indicate that the proposed fishing hut would be 2.6m wider than the existing hut and would have a height of 6.3m as opposed to 4.1m for the existing hut. This would be notably wider and higher than other structures observed at the site inspection or drawn to my attention.
18. The hut's height at in excess of 6m would be comparable to that of a bungalow. Whilst its width would be much less than that of a dwelling, its massing would nonetheless make the structure far more conspicuous than the existing hut. Although sited where the existing hut is located, the proposed hut would be a little closer to the river and would fill the narrow strip between the river and the boundary fence to a greater degree. It would be prominent in views along the path leading to the site and in views from the other side of the river.
19. The appellant points out that the site is private land and that the proposed hut would not be visible from any public viewpoint. The bend in the river and intervening trees would preclude views from the nearest access to the north-east and the hut would not be visible from the access to the south at Nuns Walk. The lack of visibility from public viewpoints would diminish the impact of the proposed hut on the character of the area but does not mean that the proposal would not have an impact. It would be observed by anyone on the land as significantly larger and more conspicuous than other fishing huts that characterise the wider area.
20. The scale of the proposed fishing hut would result in a detrimental impact on the open rural landscape appearance of the immediate area and would fail to complement the character of the area. The proposal would thereby conflict with Policies E1 and E2 of the RLP which require development to integrate with and to respect the character of the area in matters including scale and to not have a detrimental impact on the appearance and landscape character of the area within which it is located.

Environmental impacts

21. As the site is located within the River Test Site of Special Scientific Interest (SSSI) Policy E5 of the RLP which seeks to protect biodiversity interests is applicable. The River Test alongside the site feeds into the Solent Region, an important area for wildlife. Natural England states that high levels of nitrogen and phosphorus input to this water environment have resulted in dense mats of green algae impacting on the Solent's protected habitats and bird species³. Sites are at risk from additional nutrient inputs. The biodiversity implications of inclusion of toilet and wash facilities within the proposal therefore need to be assessed.
22. Natural England's Advice is that if a new development can achieve nutrient neutrality this would ensure that it would not add to existing nutrient burdens. This would show that development either avoids harm to protected sites or

³ Natural England Advice for Local Planning Authorities on Achieving Nutrient Neutrality for new development in the Solent Region (June 2019)

provides the level of mitigation required to ensure that there is no adverse effect. Their advice includes a methodology to calculate this which would be applicable to *"all types of development that would result in a net increase in population served by a wastewater system, including new homes, student accommodation, tourism attractions and tourist accommodation"*.

23. The appellant has submitted email exchanges with the Council's Planning Policy team confirming that a replacement fishing hut would not fall within one of these categories of development. As such the appellant asserts that nutrient neutrality is not relevant to the proposal. However, if the proposal were to accommodate a party of 12 twice a week throughout the fishing season, as the Council has calculated, this would result in 480 people. It is likely that this would include people from outside the Solent catchment area and so there would be a net increase in the population served by a wastewater system. This is a consideration for all relevant proposals. Natural England's Advice states *"the uncertainty about the impact of new development on designated sites needs to be recognised for all development proposals that are subject to new planning permissions and have inevitable wastewater implications. These implications, and all other matters capable of having a significant effect on designated sites in the Solent, must be addressed in the ways required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017"*. Natural England's Advice does however acknowledge that it may be difficult for smaller developments to demonstrate nutrient neutrality.
24. It is possible that the number of guests attending the proposal during a fishing season may be considerably less than 480 but there is no evidence before me to confirm that there would be no impact on biodiversity. Whilst it has been agreed that the impact of the proposal would not be of a scale and nature likely to result in a significant environmental impact warranting an Environmental Impact Assessment⁴, this does not mean that the impact would be "de minimis". Details of how wastewater would be handled were not submitted at the planning application stage but evolved during the appeal process. But there remains uncertainty on wastewater handling and its biodiversity implications. There could be an impact on the conservation objectives of a site subject to the Habitat Regulations. As such the implications of the proposal should be examined by way of an "Appropriate Assessment" by a competent authority. This is not a matter that can be left to discharge through a planning condition as an issue of principle is involved.
25. The Council contends the lack of information in the application on wastewater handling raises concerns about possible pollution of groundwater in this sensitive bankside location. At the Hearing, the appellant commented that it is likely that wastewater would be taken by quadbike to a tanker on the nearest road and then on to a wastewater treatment works, but this has not been detailed or quantified in the proposal. Whilst Southern Water⁵ have indicated that the nearest treatment works can accept effluent from new developments of this scale, the Environment Agency's advice⁶ is that sufficient information should be submitted for justification for non-connection to a mains sewer before consideration of non-mains systems. The appellant affirms that as the hut would not be used for overnight accommodation and not frequently visited

⁴ Planning Inspectorate letter dated 11 December 2019.

⁵ Email exchange between Southern Water and the appellant dated 21 August 2019.

⁶ Environment Agency Advice for local authorities on non-mains drainage from non-major development

that any wastewater volumes would be low. Nonetheless, given the sensitivity of the SSSI to groundwater pollution, resolution of this matter should not be deferred to details submitted to discharge a planning condition.

26. On the evidence before me it cannot be concluded that the proposal would not result in pollution of ground water harmful to the SSSI. Neither has it been demonstrated that wastewater created by the facilities would either achieve nutrient neutrality or not result in harm to the habitat of the Solent. The development would thereby be contrary to Policy E5 in seeking to protect the interests of biodiversity. It would also conflict with Policy E8 which does not support development that could potentially generate pollution and have an adverse impact on the natural environment.

Other matters

27. In the event of the appeal being dismissed, the appellant has indicated the implementation of a fallback position in which a caravan could lawfully be brought on to the land for up to 28 days in a calendar year⁷. This would be an unwieldy alternative to operate compared with a permanent building but would not result in the harm I have detailed in relation to the appeal proposal. I have therefore afforded it only limited weight in my analysis.

Conclusion

28. For the reasons given, and having regard to all other matters raised including by interested parties, the appeal is dismissed.

Rory MacLeod

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Cooper	Solicitor (agent)
Matt Richards	Savills (agent)
Mark Haywood	Fairhurst (consultant)
Julian Cooper	Solicitor (agent)
Owen Weaver	Savills (agent)

FOR THE LOCAL PLANNING AUTHORITY:

Samantha Owen	Senior Planning Officer, Test Valley Borough Council
Graham Melton	Planning Officer, Test Valley Borough Council

INTERESTED PARTY

Christian Dryden	Longparish Parish Council
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⁷ Schedule 2 Part 4 Class B of The Town and Country Planning (General Permitted Development) Order 2015