



Appeal Decision

Hearing Held on 10 March 2020

Site visit made on 10 March 2020

by J Ayres, BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 5 June 2020

Appeal Ref: APP/Y9507/W/19/3235150

Fox Wood Charcoal, Fox Rough, Selden Lane, Patching BN13 3UL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Ian Tooth and Miss Sarah Goodall against South Downs National Park Authority.
 - The application Ref SDNP/19/01904/FUL, is dated 16 April 2019.
 - The development proposed is the erection of a forestry building to incorporate forestry equipment and machinery store at ground level with permanent forestry workers accommodation and office at first floor level.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a building to incorporate forestry equipment and machinery storage to ground level with permanent forestry workers accommodation and office above at Fox Wood Charcoal, Fox Rough, Selden Lane, Patching BN13 3UL in accordance with the terms of the application, Ref SDNP/19/01904/FUL, dated 16 April 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. The description above does not match the description as set out in the application form. The application sought to vary a permission granted under prior approval, Ref A/39/11/AG dated 18 April 2011, in accordance with the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) Schedule 2, Part 6, Class A2 (as applicable at the time of the prior approval application). The permission was implemented through the construction of a concrete slab base however no further works were carried out to erect the building.
3. The ability to vary the prior approval permission was discussed at the hearing. The relevant text at the time the prior approval was permitted stated that development granted "shall be carried out" within 5 years of the date of the permission. The wording under Schedule 2, Part 6, Class E, E.1 (f) of the GPDO (as now in force) states that the development "must be carried out" and is therefore similar in its direction. This is markedly different from the language in the Town and Country Planning Act 1990 which requires development to have "begun" within a stated period from the date of the permission.

4. To my mind the language of the GPDO requires that a permission is more substantially completed than the initial works associated with the laying of a slab foundation. Whilst the laying of the slab would serve to confirm that a permission had been implemented it cannot reasonably be used to suggest that the permission has been carried out, or even substantially completed.
5. It was agreed by the parties that, should I find the prior approval to be beyond the remit of variation, that the description should be altered. Therefore, I am satisfied that no party has been prejudiced by the amended description and have considered the appeal on the basis of a new dwelling.

Main Issues

6. The main issues are (i) whether the appeal site is a suitable for a dwelling having regard to its location within the South Downs National Park (the SDNP); and (ii) the effect of the proposal on the character of the SDNP.

Reasons

Whether the site is suitable

7. The appeal site is outside of the built-up area boundary and is located within the SDNP. The appellant has been living in temporary accommodation on the site for a number of years. The permission for this residential occupation has now expired. Fox Wood Charcoal operates from the site, with the first kiln being used in 2014. However the appellant has worked with the forestry commission since 2011 to assist in bringing the woodland back into viable production. The appellant has been active in regenerating the woodland on the appeal site, the timber which is felled in the woodland as part of the forestry management plan is then processed in the on site sawmill. Waste timber arising from the milling process and also general timber extraction and production is dried and utilized for charcoal burning.
8. The woodland is actively managed to promote biodiversity, and the appeal site is also permitted to be used for a maximum of 30 pitches to allow camping for 60 nights of the year between 1 April and 31 October. In addition, the site can be used to provide environmental educational events. The general ethos of the camping and educational elements are to encourage sustainable pursuits and to inform visitors of the benefits of living an ecologically mindful lifestyle and appreciating the natural world.
9. Due to the charcoal burning process a full-time presence on site is required to supervise the two kilns. Furthermore, during the months for which camping is permitted, an on-site presence is necessary to ensure that the site is run properly and safely.
10. Having regard to the Council's position that an essential need is accepted, and in light of the nature of the business, I find that there is an essential need for a rural worker to be on the site. As such the proposal would comply with policy SD32(1) of the South Downs National Park Local Plan (SDNPLP) which advises that development will be permitted where it has been demonstrated that it essential for one or more person engaged in forestry enterprises to live at the site of their work.
11. Policy SD32(2) of the SDNPLP sets out a number of criteria against which new forestry worker dwellings must be assessed. The charcoal element of the

business was established in 2014 and has grown to incorporate the further camping and educational facilities.

12. The evolution of the business to incorporate camping and educational facilities are reflective of the appellant's aim for this site to be one that supports a more sustainable lifestyle whilst providing an income and encouraging others to enjoy this very special area. The aim is to maintain a sustainable forestry operation, alongside a camping experience which actively encourages sustainable living and an educational function. The annual figures demonstrate that the charcoal business and the camping business are the main sources of income.
13. The charcoal business does not at present provide an income sufficient to support the paid labour of 2 full time employees when assessed against national wages. The employees for this business are Mr Tooth and Miss Goodall, who have sought to establish a more basic way of life with the intention of earning a modest income. The business accounts were considered at the hearing, having not been submitted previously, and these identified that whilst the charcoal element alone would not support a dual income, both the charcoal and the camping business are significantly increasing the level of income to the site and that this has been consistent for a number of years.
14. The context of policy SD32 requires suitable information to be provided to clearly set out the economic viability of the enterprise. The forestry and camping elements are clearly entwined, the charcoal is sold to those using the site for camping and also on a smaller scale commercially. The forestry element actively manages the area and whilst not currently contributing economically the prospect of providing education on site demonstrates that the business is working towards a holistic approach to environmental education and appreciation.
15. The camping element actively encourages a sustainable form of tourism and the local public house is within walking distance which contributes to the viability of the immediate area. The pursuit of low impact outdoor pursuits whilst encouraging an increase in awareness of the environment and local surroundings actively contributes to the special qualities of the SDNP. I acknowledge that the camping benefit is seasonal, however I do not consider that that detracts from its contribution to the special qualities of the SDNP in allowing people to experience the area. Whilst the charcoal element may be more modest in terms of growth, it has clearly supported the lifestyle up until recently with the introduction of the camping element.
16. I consider that the appellant has demonstrated that the enterprise is viable when considered in its totality and in the context of the aim of the enterprise. As such I find that the proposal would comply with the principle of policy SD32(2)(a) which requires a business to demonstrate that it is financially sound and viable and capable of providing a reasonable return.
17. The only other building of a size suitable to provide habitable accommodation in terms of size is the detached building which currently houses the sawmill and machinery. The use of this building for business related purposes is fundamental. Whilst it might be possible to incorporate a first floor into the building this would in practice render the building unusable for the purpose of the sawmill. Furthermore I consider it would be unsuitable to provide residential accommodation in such close proximity to the sawmill as it would be

detrimental to living conditions to future occupiers. The remaining buildings on the site relate solely to the functioning of the camping site, they would not be suitable for residential conversion, nor would they be large enough to accommodate a residential unit should they be available.

18. As such I find that there are no other existing buildings within the enterprise that could be converted to for use as a residential dwelling. The proposal would comply with Policy SD32(2)(d) which explicitly requires an assessment of alternative convertible buildings.

Character and appearance

19. Fox Rough is located on a quiet lane, the landscape comprises rolling hills with woodland, open arable fields and landscaped parks. The views when travelling through the area are constantly changing, some provide glimpses of medieval settlements, whilst others are more dominated by modern infrastructure. This is reflected in the observations contained in the Landscape Visual Impact Assessment (LVIA). The appeal site is set in a slight dip, and whilst open to the front of the site a significant portion is dense woodland, it is largely surrounded by a mosaic of irregular fields, and the A27 is located a small distance to the south of the site. I am mindful that as a national park the SDNP has the highest status of protection in conserving and enhancing landscape and scenic beauty.
20. The proposed building would sit on the existing slab that was put in place for the prior approval scheme. It would appear as a large detached building, part two storey, which would have a slightly smaller mass than the sawmill. The height would be necessary to allow for storage of machinery at ground level, with the residential accommodation at first floor level.
21. The exact materials would be agreed as part of a condition however aesthetically the building would reflect a large agricultural building, which would not be uncommon within the immediate and wider context. The building would sit as part of a pair when viewed from the public footpath to the front of the site, against a backdrop of mature and dense woodland. The sawmill which is in situ would appear as the more dominant building due to its larger mass and slightly elevated position. The proposed building would be slightly more modest and sit nestled within part of the existing woodland. Other views of the building would be obscured by the existing sawmill shed and the existing established boundary hedgerows.
22. There is nothing to suggest that an element of symmetry when viewed from the front would not reflect the concept of agricultural holdings, the buildings would be grouped together and placed to best perform their specific tasks, which would accurately reflect a rural enterprise. A number of the existing established trees to the front of the site would be retained along with the hedgerow, all of these elements could be secured by way of condition.
23. There are a number of residential dwellings located along Seldon Lane, the buildings have been built to incorporate a variety of materials and designs. Some are more traditional which reflect their age, whilst others have taken a more modern approach in certain design elements. I consider that the use of a variety of materials in the scheme to incorporate both timber and red brick would respect the materials in dwellings nearby whilst also reinforcing the

nature of the appeal site and its purpose. It would sit harmoniously within the site and wider location.

24. I note the council's argument that the LVIA was 'retrofitted' to suit the prior approval scheme. Whilst it is the case that the LVIA sought to design the building that would have been constructed as part of the prior approval I consider that the LVIA accurately considered the character of the landscape and assessed whether the site could comfortably accommodate a building. I am satisfied that the design of the building did take a landscape-led approach.
25. As such I find that the proposed building would sit comfortably within the enterprise. It would therefore comply with Policy SD32(2)(e) which requires that a proposed forestry dwelling should be well related in terms of siting to existing buildings within the enterprise and be sensitively designed. It would settle into the surrounding area and appear as a natural addition to the site. It would therefore comply with Policies SD4 and SD5 which collectively seek to ensure development integrates with, respects and sympathetically complement the landscape character.

Other matters

26. Having regard to the history of the site and the previous temporary permission I am satisfied that the proposal would comply with the remaining criteria in Policy SD32(2) of the SDNPLP, namely that the need could not be fulfilled by another dwelling, and that no other residential dwellings located on or closely connected to the enterprise have been sold off.

Conclusion and Conditions

27. I find that the proposal would comply with the development plan taken as a whole. There are no material considerations which indicate that a decision should be taken other than in accordance with the development plan. Accordingly the appeal should succeed.
28. The council provided a list of suggested conditions and these were discussed at the hearing against the guidance in the National Planning Policy Framework and the Planning Practice Guidance. Some of the suggested conditions have been amended to avoid duplication and for clarity. A condition specifying the plans is necessary for certainty. Conditions securing details of materials and landscaping are necessary in the interests of preserving the character of the area. Conditions relating to biodiversity and lighting schemes are necessary to protect the ecological value of the site. For clarity and certainty, and because the dwelling is to be used in accordance with forestry, a condition is required to restrict its potential future occupation.
29. The development is relatively minor, there are no immediate neighbours, and the visibility along the main road is acceptable. As such I do not consider a condition requiring a construction method statement to be necessary. Due to the existing slab level on site and the physical levels of the site I do not consider it necessary to require floor levels.
30. In conclusion, for the reasons above the appeal is allowed and planning permission granted subject to the conditions in the attached schedule.

J Ayres

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Location Plan – Drawing No. S0;
Block Plan – Drawing No. FOX/P0;
Ground Floor Plan as Proposed – Drawing No. P1;
First Floor Plan as Proposed – Drawing No. P2A;
Roof Plan as Proposed – Drawing No. P3;
East and West Elevations as Proposed – Drawing No. P4;
South and North Elevations as Proposed – Drawing No. P5;
Soft Landscaping Plan – Drawing No. 171201
- 3) No development other than site investigation and surveys shall be carried out until a schedule of materials and finishes, including samples of such materials and finishes to be used, for all roof materials, walls, glazing, eaves details, flues and rainwater goods, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved plans.
- 4) No development other than site investigation and surveys shall be carried out until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall cover both hard and soft landscaping features and shall identify those trees and hedgerows to be retained and set out measures for their protection throughout the course of development.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) No development other than site investigation and surveys shall be carried out until there shall have been submitted to and approved in writing by the local planning authority a detailed scheme of biodiversity enhancements to be incorporated into the development. The development shall be carried out in accordance with the approved details and retained thereafter in perpetuity.
- 7) No development other than site investigation and surveys shall be carried out until there shall have been submitted to and approved in writing by the local planning authority a detailed scheme of external lighting to be installed at the site. The lighting shall:
 - (i) Comply with the guidance set out in the SDNPA's Dark Night Skies Technical Advice Note; and

- (ii) Be designed to minimise impacts on wildlife, particularly along the ecological buffers on the eastern and northern boundaries.

The lighting shall be installed, maintained and operated in full accordance with the approved details.

- 8) The occupation of the dwelling shall be limited to a person solely working, or last working, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act, or in forestry, or a widow or widower of such a person, and to any resident dependants.

END OF SCHEDULE

APPEARANCES

ON BEHALF OF THE COUNCIL:

Mr David Easton – South Downs National Park Authority

Mr Alan Bloor – Reading Agricultural Consultants Ltd

ON BEHALF OF THE APPELLANT:

Mr Stephen Jupp – Planning Solutions

Mr Ian Tooth

Miss Sarah Goodall

INTERESTED PARTIES:

Rafael Grosso - South Downs National Park Authority

Rob Ainslie - South Downs National Park Authority

Tania Hunt South Downs National Park Authority

DOCUMENTS SUBMITTED AT THE HEARING:

Statement of Common Ground

Appeal notification letters

Planning Permission Ref SDNP/16/00827/FUL

Annex A of Planning Policy Statement 7

Fox Wood Charcoal Business Plan

Financial Statements for the year ended 30 April 2018

Financial Statements for the year ended 30 April 2019

Arthur Sidney Petter V Secretary of State for the Environment, Transport and the Regions QBCOF 1998/0725/4