
Appeal Decisions

Site visit made on 10 August 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2020

Appeal A Ref: APP/B1740/W/20/3250135

The Old Pumphouse, Marl Lane, Fordingbridge SP6 1NU

- 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 Sean Kelly against the decision of New Forest District Council.
 - The application Ref 19/11173, dated 17 September 2019, was refused by notice dated 14 November 2019.
 - The development proposed is change of use from storage lock up to single dwelling.
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Appeal B Ref: APP/B1740/W/20/3249954

The Old Pumphouse, Marl Lane, Fordingbridge SP6 1NU

- 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 and Mrs Sean Kelly against the decision of New Forest District Council.
 - The application Ref 19/11172, dated 17 September 2019, was refused by notice dated 14 November 2019.
 - The development proposed is change of use from storage lock up to single dwelling, including addition of dormer window and first floor rear extension.
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Decisions

1. **Appeal A** is dismissed.
2. **Appeal B** is dismissed.

Application for costs

3. An application for costs was made by Mr and Mrs Sean Kelly against New Forest District Council. This application is the subject of a separate decision.

Procedural Matter

4. The Council made its decision prior to the adoption of the New Forest District Local Plan 2016-2036 Part 1: Planning Strategy (NFDLP). Emerging policies referenced on the decision notices have become part of the development plan, albeit with different policy numbers. The cited policies of the Core Strategy (CS)¹ and Local Plan Part 2 (LPP2)² have been saved and remain relevant. The parties have been able to comment on the implications of the altered policy context.

¹ New Forest District (outside the National Park) Core Strategy (2009)

² New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management (2014)

Main Issues

5. The main issues common to both appeals are:
- a) whether occupants of the proposed dwelling would have reasonable access to services and facilities;
 - b) the effect of the development on highway safety along Marl Lane;
 - c) the effect of the proposal on the character and appearance of the building and area;
 - d) the effect on the integrity of European protected sites; and
 - e) the effect on protected species, with particular reference to bats.

Reasons

Services and facilities

6. The appeal site lies in the countryside, outside of the built-up area boundaries defined for Fordingbridge, Ashford and Sandleheath. Saved LPP2 Policy DM20 restricts residential development in the countryside to replacement dwellings, affordable housing to meet a local need and agriculture and forestry worker dwellings. There is no provision within the policy for conversions of existing buildings to dwellings, although I note that CS Policy CS21 would permit the conversion of existing buildings to support local business development.
7. The nearest shops and services can be found in the settlement of Fordingbridge which lies at the opposite end of Marl Lane. Fordingbridge is one of the District's main towns and it is one of the most sustainable locations for growth, as evidenced by the fact that the Council has allocated strategic housing sites on the edges of the town. Whereas those sites would connect directly to the metalled highway network, the proposed dwelling would be served by an unmade and unlit lane. Although this doubles as a public right of way, the nature of the lane is such that occupants of the proposed dwelling may be predisposed to use their private car for everyday trips. The distance to the town centre is not excessive (approximately 1.5 km to the main street), but new residents would have poorer access to services and facilities than would be the case were the site to lie within a strategic allocation or the built-up area boundary.
8. Accordingly, I conclude that there would be a clear conflict with the Council's policies for housing in the countryside. Access to services and facilities would be less convenient due to the location of the site and its access arrangements.

Highway safety

9. Marl Lane is single track and there are very few passing places along its length. The lane already serves a number of dwellings and as such there is a reasonable probability of meeting another vehicle and drivers having to reverse in order to find a suitable passing place. Although speeds are low due to the poor road surface this manoeuvre could potentially be hazardous, particularly in the hours of darkness due to the unlit nature of the lane. During the daytime, when the lane is most popular with walkers, cyclists and horse riders, additional traffic would conflict with recreational users. The frequency of those conflicts would increase with the development of the Council's strategic sites, as Marl Lane will

form part of the local network of public rights of way for new residents of Strategic Site 17: Land at Whitsbury Road.

10. The appellants argue that the proposals would not lead to a material increase in traffic due to the building's use as a storage lock up. However, the building is disused and, judging by its dilapidated condition and the amount of vegetation, has been for some time. There is no substantive evidence before me regarding the site's planning history and no Certificate of Lawfulness under s191 of the Act to establish the lawful use. Consequently, the fallback position is uncertain, and I have undertaken my assessment on the assumption that re-use of the building would lead to a net increase in vehicular movements.
11. Notwithstanding the proximity of the site to Fordingbridge, Marl Lane is demonstrably substandard and even a modest increase in vehicle movements would have some detrimental impact in highway safety terms.

Character and appearance

12. The appeal site contains a former pumphouse which evidence suggests was built around the turn of the last century. It is thought that the building was constructed to house machinery which pumped water from an underground well to a local residence.
13. The brick-built structure is simple in form, but it possesses a number of ornate architectural features which contribute positively to its character. This includes exposed rafter feet, round windows in the apex of the gables and distinctive parapet verges which bookend a steeply pitched roof. The design is unique to the area but is recognisable as being of the late Victorian or Edwardian periods. The building contributes to an understanding of the history of the area and thus qualifies as a non-designated heritage asset. Whilst it does not have the same protection as a listed building its retention is nonetheless desirable, not least because it is attractive and prominent from the adjacent public right of way.
14. **Appeal A** proposes a sympathetic conversion within the existing building envelope, retaining original architectural features and re-using openings. The Council raises no objection to this minimal intervention approach, and I have no reason to take a different view.
15. **Appeal B** on the other hand proposes significant alteration to the building. An existing lean-to on the rear elevation would be extended upwards with a contemporary first floor extension, whilst a large box dormer would be constructed on the western roof slope. The dormer would be a prominent feature in views along Marl Lane and its bulky design would disrupt the simplicity of form which is an important characteristic of this former utility building. Despite its modest footprint and subservient ridge height, the proposed extension would elongate the building and detract from the original form and massing. Taken together, the interventions would harm the character of the building to the detriment of its significance as a heritage asset.
16. Conversion of the building to a dwelling under either proposal could lead to the introduction of domestic paraphernalia within the new residential curtilage. However, there is limited space available around the building and a 1-bed unit is unlikely to give rise to the trappings of modern family occupation such as play equipment and extensive garden furniture. Subject to the use of an appropriate surface construction for the driveway and the removal of permitted

development rights for extensions and incidental outbuildings and structures within the site, residential use of the pumphouse would be relatively low key.

17. To conclude, the proposal in **Appeal A** would be compatible with the character and appearance of the building and area. The scheme in **Appeal B** would have an unacceptable adverse impact on the character of the building and the area. This proposal would conflict with saved LPP2 Policy DM1 and NFDLP Policy ENV3 insofar as these promote high quality design which conserves or enhances the significance, character and appearance of heritage assets.

European protected sites

18. Large parts of the District are covered by the New Forest and Solent Coast European protected sites³. The Council has undertaken an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) which concludes that without mitigation the proposals would, in combination with other developments, have an adverse effect on the integrity of the protected sites due to recreational visits by new residents.
19. The appellants do not challenge this conclusion and have submitted a unilateral undertaking (UU) which makes provision for a contribution towards measures to mitigate the adverse impacts. It is unclear how the sum of money set out in the UU relates to the figure contained in the Mitigation Strategy For European Sites Supplementary Planning Document. Furthermore, I have concerns about the deed itself and whether it could be relied upon to secure the contributions. For example, the words 'mitigation contribution' referenced in Schedule 1 are missing from the Definitions and the payment of monies is not tied back to the planning applications. The Council does not raise concerns about the UU, but as it stands I am not satisfied that it would address the requirements of NFDLP Policy ENV1.
20. The Council has carried out a separate appropriate assessment in relation to phosphorous levels in the River Avon. This concludes that the proposals would, in combination with other developments, have an adverse effect on the River Avon Special Area of Conservation, Avon Valley Special Protection Area and Ramsar site due to the impacts of additional phosphate loading, but that the adverse impacts would be avoided through the future implementation of mitigation projects which will be paid for by the Council from its Community Infrastructure Levy receipts.
21. The appropriate assessment relies upon the delivery of phosphate neutrality measures set out in the River Avon SAC – Phosphate Neutral Development Interim Delivery Plan⁴ (IDP). This document sets out measures for new development in the period to March 2020, and thereafter relies on the delivery of the Wessex Water's Outcome Delivery Incentive (ODI). Although I have seen no evidence to indicate that the ODI is fully in place, this relates only to mains drainage in any event; the proposed dwelling would be served by a package sewage treatment plant.
22. Natural England's view is that, since the IDP period has been concluded, the Council's appropriate assessment should not be rolled forward without a valid evidence-based justification that provides the required reasonable certainty for

³ New Forest SAC; New Forest SPA; New Forest Ramsar site; Solent Maritime SAC; Solent and Isle of Wight Lagoons SAC; Solent and Southampton Water SPA; Solent and Southampton Water Ramsar site

⁴ Wood Environment & Infrastructure Solutions UK Ltd – January 2019

phosphate neutrality. The appellants argue that the impact of a single 1-bed dwelling would be insignificant in any event and draw my attention to Section D.7.2 of the River Avon SAC Nutrient Management Plan. However, this makes clear that assessment of such matters is rarely straightforward, and its guidance should be used with caution. In order to comply with the Habitats Regulations an appropriate assessment must demonstrate, beyond reasonable scientific doubt, that the integrity of the designation would not be adversely affected, and this must have regard to in-combination effects with other developments.

23. The appellants have provided no substantive information relating to the design of the non-mains drainage solution, the outputs of the sewage treatment plant or the likely cumulative effects of multiple similar developments across the District. Consequently, the assertion that the proposals would be insignificant in terms of its phosphate impacts is not properly evidenced.
24. It is an established principle that decisions taken on the integrity of a European site should adopt the precautionary approach. Based on the evidence before me and bearing in mind the expert advice from Natural England, to which I attach substantial weight, I cannot be reasonably certain that adverse effects on the European sites would be satisfactorily avoided or mitigated. Although the appellants have suggested a negatively worded planning condition to secure mitigation, without any information on what measures are being proposed and when they would be delivered, the rigorous requirements of the appropriate assessment process would not be met. Accordingly, I find that the proposals conflict with Regulation 63 of the Habitats Regulations and NFDLP Policy ENV1.

Protected species

25. ODPM Circular 06/2005⁵ confirms that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It explains that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The guidance makes clear that surveys should be carried out before planning permission is granted; surveys should only be required by condition in exceptional circumstances.
26. Anecdotal evidence from local residents indicates that bats may be resident in the building. The nature and condition of the building makes that a distinct possibility and there is a reasonable likelihood that bats may be present. Whilst this may not necessarily preclude conversion of the building to residential use, there may be a requirement for mitigation measures in order to prevent harm to bats. In the absence of a survey and report from an appropriately qualified and experienced ecologist it is not possible to assess the effects on legally protected species. The proposals therefore conflict with policy on preventing harm to biodiversity contained within paragraph 175 of the Framework.

Discussion and Planning Balance

27. Both proposals would conflict with LPP2 Policy DM20 in respect of residential development in the countryside. However, LPP2 Policy DM1 (c) explains that where appropriate and necessary to secure the long term future of a heritage

⁵ Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system

asset, in particular where it is in a poor condition or at risk, an exception may be made to other local plan policies, providing: • the nature of the heritage asset means it is not suitable for all reasonable uses of the site which accord with local plan policies; • the proposal will not materially harm the significance of the heritage asset and its setting, and is sympathetic to its conservation; • any variance in, or departure from, other policies is minimised to that necessary to secure the heritage asset, and the benefits of securing the long term conservation of the heritage asset outweigh the disbenefits.

28. It is common ground that the building is suitable for conversion and that its retention is desirable. However, there is no substantive evidence before me to demonstrate that there has been consideration of alternative uses that would comply with CS Policy CS21. The appellants contend that residential conversion represents the optimal viable use of the building due to the significant investment required, but this is not supported with any viability evidence. For these reasons, the first bullet point of Policy DM1 (c) is not addressed by either scheme.
29. **Appeal A** would represent a sympathetic conversion of the building with the minimum level of works required to secure the long term conservation of the heritage asset. **Appeal B** on the other hand would be materially harmful to the significance of the building. This level of intervention is unnecessary and for this reason the second scheme would not comply with the second and third bullet points of Policy DM1 (c). Consequently, for the aforementioned reasons neither scheme qualifies as an exception under the policy.
30. Looking at the other harms, I have found that occupants of the dwelling would have poorer access to services and facilities in comparison to a site within the built-up area boundary. Paragraph 79 of the Framework seeks to avoid isolated new homes in the countryside but makes an exception where the development would re-use redundant or disused buildings and enhance its immediate setting. Both schemes would re-use a redundant building but only **Appeal A** would do so sympathetically and thereby enhance the immediate setting.
31. Both schemes would give rise to highway safety issues from additional traffic. Whilst this weighs against both schemes I am mindful that any policy compliant use is likely to generate some vehicle movements. Therefore, if the objective of securing the long term future of the heritage asset is to be achieved, a modicum of harm to highway safety would need to be accepted.
32. Both schemes would have a significant effect on European protected sites in combination with other developments and there is no mitigation in place to ensure that the integrity of these habitats sites is not adversely affected. I have attached substantial weight to the resulting conflict with development plan policy and the Habitats Regulations. I have also attached significant weight to the potential harm to legally protected species.
33. The appellants contend that the tilted balance within paragraph 11(d)(ii) of the Framework is engaged by reason of the inability to demonstrate a 5 year supply of deliverable housing land. However, the Council states that the requisite land supply does exist, and it points to the fact that it has recently adopted a new local plan. Regardless of the actual position, the presumption in favour of sustainable development does not apply in circumstances such as this where a proposal is likely to have a significant effect on a habitats site⁶.

⁶ Paragraph 177 of the Framework

34. **Appeal A** would provide public benefits by securing the long term future of a non-designated heritage asset and delivering a new 1-bedroom home. The development would also generate employment during the conversion phase. Against these benefits I must balance the adverse impacts on habitats sites and protected species and the more modest harms arising to highway safety and in terms of poor access to services and facilities for future occupiers of the development. Having given careful consideration to the various factors, I conclude that the cumulative harm would outweigh the benefits. There are no material considerations to justify a decision otherwise than in accordance with the development plan taken as a whole.
35. The planning balance in the case of **Appeal B** is similar to **Appeal A**, with the exception that there would be additional harm in respect of the impact on the character and appearance of the building and the area. It therefore follows that **Appeal B** must also fail.

Conclusion

36. For the reasons given above and having regard to all other matters raised, including landownership issues raised by residents and concerns over flooding and drainage, I conclude that both appeals should be dismissed.

Robert Parker

INSPECTOR