
Appeal Decision

Site visit made on 5 October 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2020

Appeal Ref: APP/L1765/W/20/3247307

The Tree Nursery, The Barn North of Sandy Lane, Sandy Lane, Shedfield SO32 2HQ

- 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 P Mifsud against the decision of Winchester City Council.
 - The application Ref 19/02107/FUL, dated 24 September 2019, was refused by notice dated 4 December 2019.
 - The development proposed is construction of a replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling at The Tree Nursery, The Barn North of Sandy Lane, Sandy Lane, Shedfield SO32 2HQ in accordance with the terms of the application, Ref 19/02107/FUL, dated 24 September 2019, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr P Mifsud against Winchester City Council. This application is the subject of a separate decision.

Procedural Matters

3. The appellant has submitted a signed unilateral undertaking which secures a financial contribution to mitigate the effect of the development on the Solent Special Protection Areas. The Council is satisfied that the second reason for refusal has been addressed.
4. The proposal is described on the application form and decision notice as a replacement dwelling but there is no dwelling presently on the site. In fact, the development would replace an agricultural building which has been granted prior approval under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 for change of use to a dwelling.

Main Issue

5. The main issue is whether the site is a suitable location for a dwelling, having regard to the development plan and other material considerations.

Reasons

6. The appeal relates to a disused agricultural building in the corner of a field. The site lies outside of any built-up area and is in the countryside for planning policy purposes. Policy MTRA 4 of the Winchester District Local Plan 1 – Joint Core Strategy (2013) (JCS) restricts housing in the countryside to development which has an operational need for a countryside location, re-use of rural buildings for tourist accommodation or affordable housing, and small scale sites for low key tourist accommodation. The proposal for a new-build market home would not fall within any of these categories and consequently there is a clear conflict with the development plan. A grant of planning permission would only be justified where other material considerations exist that outweigh the policy conflict.
7. Principal amongst the material considerations being advanced is the fact that prior approval was granted¹ in September 2017 for change of use of the agricultural building to a 1-bed dwelling. The Regulations² stipulate that development must be completed within a period of 3 years starting with the prior approval date. Although the prior approval has expired, there has been no change in circumstances and I have no reason to think that a fresh application would not be approved. The principle established by the grant of prior approval represents a genuine 'fallback' position and there is every prospect that the building would be converted to a dwelling should this appeal fail. The appellant has already gone to the effort of installing electricity and water supply connections which demonstrates a clear intent to develop the site.
8. One of the main purposes of restricting housing development in the countryside is to reduce the need to travel by private car in order to reduce carbon emissions. The site is approximately 1.5 km from the nearest services and facilities in Waltham Chase and the proposal would thus generate additional car trips. However, any harm in this regard would be offset by the fact that the existing building could be used as a dwelling under permitted development rights. The new dwelling would be larger than that building, but its floorspace would be similar after making an allowance for the size of extension ordinarily permissible under Policy DM3 of the Winchester District Local Plan Part 2 (LPP2). The number of trips generated to and from the site would be comparable.
9. The Council has not refused permission for reasons relating to the impact of the proposal on the character and appearance of the area. However, the officer report raises the concern that the development would be out of context with its rural surroundings. Although bulkier than the existing building, the proposed dwelling would have the appearance of a converted timber barn and in that regard its design would be sympathetic to the locality. The new residential curtilage would be substantially larger than that provided under the permitted development fallback, but robust landscaping on the site boundaries would provide visual containment for any domestic paraphernalia and address the Council's fears regarding light spill. The proposal would not be detrimental to the character and appearance of the area, either in views from Sandy Lane or from the surrounding countryside to the north. The Council accepts that the landscape is not of high sensitivity and furthermore its Landscape Officer has raised no objection to the scheme. I have taken these factors into account.

¹ Ref. 17/01939/PNACOU

² Paragraph Q.2(3) of Schedule 2, Part 3 of the GPDO

10. The proposal would conflict with the development plan taken as a whole. However, there is a genuine 'fallback' position and one which is greater than theoretical. I have attached this significant weight in the planning balance. The proposal would be similar to the fallback in impacts of traffic generation and the additional visual impact of a larger building and residential curtilage would be capable of being mitigated through high quality landscaping. I therefore conclude that there are material considerations sufficient to outweigh the conflict with the development plan. The site is a suitable location for a dwelling and the proposal would not be materially detrimental to planning interests.

Other Matters

11. I have taken account of the concerns from the occupiers of 1 Lyons Cottages that the proposal would alter their outlook and lead to overlooking. However, the distance between the objectors' property and the appeal site would ensure that no harm to living conditions arises. Although I have noted the comment about precedent, each case is considered on its own merits and there is no reason to think that this proposal, which is predicated on the pre-existence of a building with a history of prior approval for change of use to a dwelling, would set a precedent for other forms of development.

Conditions

12. In addition to the standard time limit condition I have included a plans condition as this provides certainty. To protect the character and appearance of the area, conditions are necessary to secure details of materials and landscaping. The Council has suggested these as pre-commencement conditions but this is too onerous and I have amended the wording accordingly. A pre-commencement condition to require details of foul and surface water drainage is justified.
13. In the interests of protecting bats, conditions are needed to ensure that the development is carried out in accordance with the recommendations of the submitted Bat Roost Assessment and to control external lighting. To improve effectiveness and avoid a pre-commencement clause, I have rephrased the lighting condition to provide that details are required prior to the installation of any lighting. The suggested condition to secure a Biodiversity Enhancement Plan is reasonable and necessary, having regard to national policy within paragraph 170 of the National Planning Policy Framework (the Framework).
14. To secure compliance with JCS Policy CP11 conditions are necessary to require the submission of details of water and energy efficiency measures, and verification that the approved details have been incorporated into the as-built development.
15. The Planning Practice Guidance states that the removal of permitted development rights may not pass the test of reasonableness or necessity. However, I consider that such restrictions are appropriate in this case. The proposal is contrary to development plan policy and only justified by reference to the permitted development fallback position. I have therefore imposed a condition to remove permitted development rights for extensions and to preclude the insertion of an upper floor of accommodation. This is necessary to comply with LPP2 Policy DM3 in respect of maintaining a stock of smaller dwellings in the countryside and to ensure that the development does not result in a greater number of vehicle trips and a corresponding increase in carbon emissions relative to the fallback position.

16. Finally, to prevent the exercise of Class Q permitted development rights in addition to the planning permission, I have imposed a condition to require demolition of the existing building prior to occupation of the new dwelling.

Appropriate Assessment

17. The appeal site lies within 5.6 km of the Solent Special Protection Areas (SPA). The Solent is internationally important for its over-wintering birds. It has been established that additional residential development within this zone would likely result in harm to the protected areas through recreational disturbance. As a member of the Solent Recreation Mitigation Partnership the Council operates a system of developer contributions in accordance with the Solent Recreation Mitigation Strategy (the Strategy), with such monies being put towards the funding of projects such as rangers to divert visitors away from sensitive areas.
18. The appellant has provided a signed unilateral undertaking which secures a financial contribution towards mitigation projects in line with the Strategy. The measures funded in this manner would ensure that the proposal does not harm the integrity of the SPA and secure compliance with JCS Policies CP15 and CP16 and the requirements of the Habitats Regulations³. The obligations within the unilateral undertaking are necessary to make the proposal acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. As such, they comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
19. It is known that excess levels of nitrates can damage the SPA through a process of eutrophication. However, the submitted nitrate calculations demonstrate that the proposal would result in a deficit of nitrates as a result of the land being taken out of agricultural use. It has therefore been demonstrated that there would be no adverse impact on the ecological integrity of the SPA.

Conclusion

20. For the reasons given above and having had regard to all other matters raised, including paragraph 79 of the Framework concerning the development of isolated homes in the countryside, I conclude that the appeal should succeed.

Robert Parker

INSPECTOR

³ The Conservation of Habitats and Species Regulations 2017

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: Site Location Plan and Drawing Nos SPP/08/9/1 and SPP/08/9/2.
- 3) No development shall commence until details of the disposal of foul and surface water have been submitted to and approved in writing by the local planning authority. The approved details shall be fully implemented before occupation of the dwelling.
- 4) No above ground development shall take place until details and samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted (including finishes for the timber cladding) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No above ground development shall take place until a Biodiversity Enhancement Plan has been submitted to and approved in writing by the local planning authority. This shall include details and locations of any enhancement provisions (such as bird boxes, Swallow nest cups, bat boxes and native species rich planting). The biodiversity enhancement provisions shall be implemented prior to the dwelling being first occupied, or in accordance with a timetable to be agreed with the local planning authority, and they shall be retained thereafter.
- 6) No above ground development shall take place until detailed information (in the form of SAP design stage data and a BRE water calculator) demonstrating that the dwelling will meet the equivalent of Code 4 standard for energy and water (as defined by the ENE1 and WAT 1 in the Code for Sustainable Homes) has been submitted to and approved in writing by the local planning authority. The development shall be built in accordance with the approved details.
- 7) The dwelling hereby permitted shall not be occupied until detailed information (in the form of SAP "as built" stage data and a BRE water calculator) demonstrating that the dwelling meets the equivalent of Code 4 standard for energy and water (as defined by the ENE1 and WAT 1 in the Code for Sustainable Homes) has been submitted to and approved in writing by the local planning authority. The development shall be occupied in accordance with these details.
- 8) The dwelling hereby permitted shall not be occupied until the existing building on the site has been permanently demolished and any resulting materials removed from the site (or those materials otherwise incorporated into the approved development).

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- 9) The dwelling hereby permitted shall not be occupied until a detailed landscaping scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include a planting layout which specifies species, planting sizes and planting densities. The approved scheme shall be implemented in the first planting season following the occupation of the dwelling or the completion of the development whichever is the sooner. If within a period of 5 years from the date of planting, any trees, shrubs or plants die, are removed or, in the opinion of the local planning authority, become seriously damaged or defective, others of the same species and size as that originally planted shall be planted at the same place, in the next planting season, unless the local planning authority gives its written consent to any variation.
- 10) No external lighting shall be installed on the site unless details of that external lighting have been submitted to and approved in writing by the local planning authority. The lighting should be in accordance with Guidance Note 08/18 produced by the Bat Conservation Trust and Institute of Lighting Professionals. The submitted information shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained and operated in accordance with the approved details unless the local planning authority gives its written consent to the variation.
- 11) The development shall be carried out in accordance with the recommendations set out within Section 5 of the submitted Bat Roost Assessment (Phillips Ecology, September 2019). Thereafter, the compensation measures shall be permanently maintained and retained in accordance with the approved details.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking and re-enacting that Order with or without modification), no development permitted by Classes A and B of Schedule 2 Part 1 of the Order shall be carried out, and no upper floor of accommodation shall be inserted into the building, without a fresh grant of planning permission.

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