

Appeal Decision

Site visit made on 12 February 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2021

Appeal Ref: APP/B1740/W/20/3261600

Land at former Dairy Site, Milford Road, Pennington SO41 8DW

- 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 DMG Retirement Trust against the decision of New Forest District Council.
 - The application Ref 20/10501, dated 30 April 2020, was refused by notice dated 27 August 2020.
 - The development proposed is first floor extension to existing office building; new external staircase.
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Decision

1. The appeal is dismissed.

Background

2. Saved Policy LYM5¹ of the New Forest District Local Plan Part 2: Sites and Development Management (2014) (LPP2) relates to the application site and adjoining land which is in separate ownership. The allocation seeks to deliver a mixed use development, including around 14 dwellings and with commercial development on the ground floor of the Milford Road frontage.

Main Issues

3. The main issues are:
 - whether the proposal accords with LPP2 Policy LYM5 that allocates the site for housing and commercial uses; and
 - whether the proposal would adequately secure biodiversity net gain, measures to maximise the efficiency of resources and other means to minimise its overall environmental impact.

Reasons

Principle of development

4. The appeal site is formed from a small single storey commercial building which is set within a hardsurfaced shared yard and in close proximity of a number of other commercial workshops. The site is also adjacent to a small mixed storage area and separately, a vehicle showroom and workshop. Collectively, the commercial uses and their surroundings form part of the approximate 0.38 hectare area allocated under LPP2 Policy LYM5.

¹ LYM5: Fox Pond Dairy Depot and Garage, Milford Road, Pennington

5. The proposal seeks to extend above the existing building to provide a first floor office. There would be no changes to the building's footprint or surrounding external area.
6. Insofar as the proposal would fail to deliver any of the proposed residential dwellings which the allocation clearly seeks to prioritise, it would undermine the aims of the Policy. The allocation clearly intends for the commercial element of the scheme to be delivered as a ground floor use with residential above, so even the location of the intensified commercial use would fail to accord with the aspirations of the policy to create a continuation of the Milford Road frontage.
7. It is claimed that the extent of the allocation is in a total of three ownerships with the appellant having purchased the appeal site in 2017. Whilst any discussions about the availability of the site and principle of the allocation may have been held with a previous owner, it is likely that the appellant would have been made aware of the allocation and its implication for future development.
8. Whilst it is suggested that the appeal proposal could have a short-term lifespan, with a cost-effective design and construction, there would be no ability to control the removal of the proposal. Any permission given would be with a three year period for implementation and a date for its removal could not be easily predicted on the basis of a satisfactory return on investment for the appellant. The economic factors that could affect its success can vary considerably. Furthermore, the suggestion of the building being intended for such a short-term period would not minimise or make best use of resources.
9. I note that the Council has not sought to assemble the site or produce a development brief. Whilst it is suggested that the respective owners are more likely to prioritise their own business interests rather than coordinate activities to promote a holistic redevelopment, there is more likelihood of this occurring within the plan period if the sites are prevented from developing other than in accordance with the Policy. Whilst I note that another allocation policy within the LPP2² includes specific wording to preclude the intensification of existing commercial uses, such wording could be considered superfluous if the policy seeks the redevelopment of the site for alternative purposes. Such wording would be unnecessary in the case of Policy LYM5 because it is clear what the allocation is seeking to achieve and the modest scale of the site means that all component parts are necessary to realise those aims. Any intervening intensification of the commercial uses would clearly conflict therewith.
10. I note the appellant's claim that the proposal differs from the 'irreversible' proposal for the garage site that was recently dismissed on appeal³ due to its temporary nature and given that there would be more flexibility on how much residential development the remainder of the site could accommodate. Given my findings on the inability to control the lifetime of the development and given the lack of any evidence to show how the appeal proposal might be successfully integrated with the balance of the allocation site, I do not find this to be the case. Similarly, I do not consider that the inability to have secured residential development on the site through the prior approval process reflects on the Council's intent to secure the site's redevelopment in accordance with Policy LYM5. Under the prior approval process, Policy LYM5 was not even capable of being a consideration.

² LPP2 Policy TOT6

³ APP/B1740/W/20/3251846

11. Given the intent of the allocation to promote the delivery of housing, albeit with some opportunity for commercial development, I do not consider that the refusal of the appeal application amounts to the Council suppressing business opportunities. Until such time as the site's redevelopment is secured, the existing businesses are likely to continue. The Council's broader and longer-term plan⁴ for the location of homes and business growth will seek to direct those uses, and a combination of the two, to the places where they are most needed and best suited in the interests of an effective and efficient use of land.
12. Therefore, in view of the above, the proposal would prejudice the aims of LPP2 Saved Policy LYM5.

Environmental Impact

13. The proposal is to extend above an existing single storey, flat roofed building on a site which is fully hardsurfaced and within an urban setting. In this sense, it appears to be of limited biodiversity value. There are limited details in respect of the fabric of the existing building, or that of the proposed extension. Details in respect of electric car charging points or broadband connection speeds are also absent from the appeal documents.
14. Despite the current absence of such details and that it would be preferable to address these matters in an up-front manner, given the limited scale of the development, such could be secured by way of suitable planning conditions in order to remedy any anticipated harm or conflict with policies. However, as the appeal is failing in relation to the first main issue in any event, these matters are not decisive.
15. Consequently, subject to the imposition of conditions, the proposal could avoid harm by securing adequate biodiversity enhancements, measures to maximise the efficiency of resources and other means to minimise the overall environmental impact in accordance with Policies STR1, ENV3 and IMPL2 of the LPP1⁵ and DM2 of the LPP2. These Policies collectively seek to achieve an environmental net gain, electric car charging points, and design measures that improve resource efficiency and climate change resilience.

Other Matters

16. I note that no issues were raised in respect of the design of the development or its effect on highways or the living conditions of neighbouring occupiers. The absence of other harms is a neutral factor in the overall balance.

Planning balance and conclusion

17. The proposal would conflict with the development plan, read as a whole. The enhanced economic benefits that could be secured by the proposal do not amount to a consideration of sufficient materiality to indicate that a decision should be taken other than in accordance therewith.
18. For the reasons set out above, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

⁴ expressed through New Forest District Local Plan 2016-2036 Part 1: Planning Strategy (2020) (LPP1) and LPP2