



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/B9506/W/20/3258398

The Bold Forester, Beaulieu Road, Marchwood SO40 4UQ

- 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 & Mrs Lewis against the decision of New Forest National Park Authority.
 - The application Ref 19/00931, dated 6 December 2019, was refused by notice dated 14 April 2020.
 - The development proposed is change of use from ancillary skittle alley to ancillary letting rooms; Changes to fenestration to the South-western wing of the building allowing access to the proposed ancillary letting rooms; Addition of timber cladding to the facades of the wing; DDA compliant ramped access added to one of the letting rooms.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the location of the proposal accords with local policies that seek to control the development of new tourism accommodation in the New Forest National Park.
 - the effects of the proposal on a range of internationally and nationally protected sites.

Reasons

Location of development

3. The appeal proposal comprises the change of use and alterations of a former skittle alley to form four units of holiday accommodation. The former skittle alley forms part of the existing public house, The Bold Forester, which is in a rural position within the New Forest National Park (NP).
4. The public house presently includes manager's accommodation, but it is not a guest house or inn that provides any overnight accommodation to patrons.
5. New Forest National Park Local Plan (adopted 2020) (Local Plan) Policy SP46 relates to sustainable tourism and proffers support for a limited number of development types, including retention of serviced accommodation, supporting opportunities to relieve visitor pressure, small-scale visitor facilities and the creation of accommodation in the four Defined Villages (Ashurst, Lyndhurst, Brokenhurst and Sway). The Policy specifically states that "outside of these

villages, visitor facilities will be supported through the reuse or extension of existing buildings in line with Policies DP45 and DP49, and visitor accommodation will be considered as part of a farm diversification scheme...”.

6. Policy SP46 refers to visitor accommodation as distinct from visitor facilities. Whilst there is no specific definition of ‘visitor facilities’ within the Local Plan, paragraph 8.25 refers to restaurants, shops and other services used by visitors which suggests that these, along with cultural and recreational opportunities, are the types of facilities envisaged.
7. Policy DP49 relates to the reuse of buildings outside of the Defined Villages. However, in the context of Policy SP46, the reuse of such buildings is specifically intended for visitor facilities, not additional visitor accommodation.
8. Policy DP45 relates to the extension of non-residential buildings and uses and requires that proposals should not materially increase the level of activity on the site and should be contained within the existing site boundaries. However, paragraph 8.19 of the preamble linked to footnote 48 states that the Policy relates to extensions to existing serviced accommodation. The footnote explains that Policy DP45 is not intended to support new forms of self-catering accommodation. This is in recognition of the existing oversupply of self-catered accommodation, i.e. including caravan parks and campsites, and the pressures that tourism exerts on the National Park landscape.
9. The proposal is not advanced as being ‘serviced accommodation’, of which the Local Plan is generally more supportive. The evidence details that the letting rooms would be occupied by guests who would take breakfast from the pub but with the anticipation that additional food and drink sales would be generated. The absence of self-catering facilities, i.e. a cooker or kitchenette, points in this direction and it seems unlikely, given their modest scale, that such facilities could be later installed. However, despite the physical attachment to the pub, the units would benefit from a degree of independence, with each having a separate access. Whilst controls could adequately ensure that the units were not occupied as independent dwellings or for anything other than holiday accommodation, the proposal neither fits squarely with the concept of serviced accommodation (i.e. hotel rooms) nor self-catered accommodation.
10. The appellant highlights that the provision of letting rooms within the building would be ancillary to the primary function of the planning unit as a public house, highlighting the functional and physical links, the relative proportion of the floorspace and revenue that it would derive compared to the main business. However, the appeal proposal is not a certificate of lawfulness of a proposed use or development under Section 192 of the TCPA¹ and whether permission is specifically required is not a matter before me. In any event, as external works are included, the whole proposal is before me.
11. Were the proposal (excluding external alterations) considered not to constitute a material change of use, this could form a consideration of relevance. I note that the appellant has provided an extract of a separate Council’s report which suggests such a view was reached in respect of a similar scheme. I have limited details with which to compare the two, but, in my view, the current proposal would constitute a material change. The current use of the site is as a public house; a sui generis drinking establishment. It is currently without any

¹ Town and Country Planning Act 1990

accommodation that would be typical of a guesthouse or 'inn'. In this sense, the provision of four letting rooms would diversify the current use of the site and result in an alternative mixed use to that which exists at present.

12. The Local Plan glossary definition of a 'Local Community Facility' is one which is *"of direct benefit to the immediate local community that provides a service, including village shops, pubs and village halls as well as small-scale health and educational services, sports and social facilities"*. As a public house, The Bold Forester is a community facility. The appellant highlights the anticipated benefit of the proposal to the viability of the business and that Local Plan Policy SP39 seeks to support the retention of and prevent the loss of community facilities.
13. The submitted viability information clearly shows that the proposal would enhance the profitability of the business. However, the information also shows that the business' profitability was far greater in the financial year 2019/2020 compared to the previous year, despite the impact of the COVID-19 pandemic. This phenomenon is not explained. The appellant's case does not advance that the viability of the business was specifically at risk, prior to, or since the start of the pandemic, and absent of such a claim I cannot assume that its future as a community facility is uncertain irrespective of the outcome of the appeal.
14. Drawing together this main issue, the appeal site does not lie within any of the Defined Villages. Whilst the proposal involves the reuse of an existing building, it would be for visitor accommodation rather than for a visitor facility and it would not comprise the extension of an existing serviced accommodation use. Clearly, the proposal does not comprise part of a farm diversification scheme. As such, the proposal does not specifically accord with any parts of Policies SP46, DP45 or DP49. The Policies seek to deliberately exclude most new forms of tourism accommodation outside of the four Defined Villages, and therefore, are not silent in this regard. Thus, the proposal is in conflict with the aforementioned Policies and the development plan as a whole.

Protected Sites

15. The appeal site lies within the zones of influence of the Protected Sites² for which there is a significant range of habitat types, species and associated conservation objectives. Clearly, the proposal is not directly connected with, or necessary to site management for nature conservation.
16. As identified through the Local Plan, proposals for additional overnight accommodation would result in likely significant effects (LSEs) on important interest features of the Protected Sites, alone and in combination with other plans and projects. Such effects would derive from an increase in recreational disturbance and the generation of additional wastewater.
17. The appellant has indicated a willingness to provide a planning obligation to provide habitats mitigation contributions to offset the effects from increased recreational disturbance. These measures are in line with the SPD³, which follows on from an earlier Mitigation Strategy⁴, and, in principle, Natural England consider such measures sufficient to avoid an adverse impact on the integrity of the Protected Sites. However, despite the appellant's willingness to

² New Forest Special Protection Area, New Forest Special Area of Conservation and RAMSAR Site, Solent and Southampton Water SPA and RAMSAR site, Solent & Isle of Wight Lagoons SAC and Solent Maritime SAC

³ Mitigating recreational impacts on New Forest designated sites - Supplementary Planning Document (2020)

⁴ Solent Recreation Mitigation Strategy (2017)

provide one, no such planning obligation has been submitted during the processing of the appeal.

18. In respect of the nitrogen neutrality issue, there does not yet appear to be any defined mitigation strategy. An interim approach requires applicants to either produce evidence to show that the development is nitrogen neutral or agree to the imposition of a Grampian condition to ensure the provision of an avoidance and mitigation package prior to occupation of the development.
19. No site-specific mitigation scheme has been put forward with the appeal. Whilst the proposal is to be served by an existing septic tank and may more readily achieve nitrogen neutrality than other schemes that discharge to the wastewater treatment works, the evidence does not corroborate this point. Nevertheless, the appellant has agreed to the imposition of a Grampian condition to require the submission of a mitigation package to address the additional nutrient input arising from the development and for occupation thereof to be prevented until all measures have been provided.
20. At this stage, nothing has been submitted, based on the best available scientific evidence or otherwise, to indicate that such a mitigation solution is capable of being devised and implemented. Furthermore, were the mitigation measures to include any payment of contributions, the Planning Practice Guidance advises that it is not acceptable to require applicants to enter into a planning obligation or other agreement via negatively worded conditions (Grampian conditions) unless in exceptional circumstances. In the context of a general need to comply with the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), there is nothing uniquely exceptional in the delivery of a tourism accommodation proposal of such a modest scale which conflicts with the locational strategy outlined in the Local Plan. Exceptional circumstances which might justify the use of such conditions do not therefore exist.
21. Lastly, it is likely that the discharge of any Grampian condition in relation to a nitrate mitigation package would be subjected to a further appropriate assessment, of which I cannot predetermine the outcome. Thus, the effectiveness of any future measures are uncertain at this stage.
22. In view of my reasons above, and in the absence of evidence to the contrary, I can only conclude that the development would have LSEs on the integrity of the Protected Sites due to the additional generation of nutrients and the lack of appropriate and appropriately secured mitigation relating both thereto and also in relation to recreational effects. As such, the proposal conflicts with SP5 and SP6 of the Local Plan, which only permit development that will not result in adverse effects on the integrity of any of the relevant protected sites.

Planning balance and conclusion

23. The proposal raises conflict with the development plan insofar as it would introduce additional tourism accommodation in a location and of a type not supportable within the New Forest National Park. It would also do so without avoiding or mitigating any effects on Protected Sites. Thus, the proposal conflicts with the development plan, when read as a whole.
24. The proposal would generate economic benefits, not only for the business but more widely, including the creation of additional employment opportunities.

The appellant has raised that the proposal would also assist with offsetting the negative economic impacts of COVID-19 and better futureproof the business as a local community facility, the latter of which would be positive in respect of the social dimension of sustainability. However, whilst I give moderate weight to these considerations, their materiality is not so great that they outweigh the identified harm and dictate that a decision should be taken other than in accordance with the development plan.

25. Thus, for the reasons set out above, the appeal is dismissed.

Hollie Nicholls

INSPECTOR