



Appeal Decision

Hearing held on 24 February 2021

Site visit made on 25 February 2021

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 22 March 2021

Appeal Ref: APP/B9506/W/19/3242767

New Forest Activity Centre, Rhinefield Road, Brockenhurst SO42 7QE

- 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 G McNair-Wilson against the decision of New Forest National Park Authority.
 - The application Ref 19/00623, dated 29 July 2019, was refused by notice dated 20 November 2019.
 - The development proposed is erection of single dwelling, outbuildings and landscaping of the site; demolition of existing equestrian buildings.
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Decision

1. The appeal is allowed and planning permission is granted for erection of single dwelling, outbuildings and landscaping of the site; demolition of existing equestrian buildings at New Forest Activity Centre, Rhinefield Road, Brockenhurst SO42 7QE in accordance with the terms of the application, Ref 19/00623, dated 29 July 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is whether there is adequate justification for the proposed dwelling, in the light of development plan policies which seek to restrict residential development in open countryside and the statutory purposes of the National Park (NP), having regard to advice in the National Planning Policy Framework (NPPF).
3. The Council also refused the application on the basis of the potential effects on the ecological integrity of the New Forest and Solent Special Protection Areas (SPAs) (reason for refusal no. 3). The appellant submitted a S106 Unilateral Undertaking (UU) intended to mitigate the potential adverse impacts. I consider the UU later in the decision.

Reasons

The site and surroundings

4. The appeal site consists of part of the former estate of Black Knoll House, built in 1880 and in continuous ownership by one family between 1953 and 1992. Two large steel portal frame buildings were constructed in the 1960s for equestrian use associated with around 23 acres of surrounding grazing land. The larger of the two was used as an indoor riding arena for training horses and enabled the involvement of the previous owners in competing at 4 separate Olympic Games. The smaller building was used as a hay barn and for

- stabling. The steel framed buildings comprise around 2000 square metres (sqm) in area and include loose boxes, raked audience seating, offices, storage areas and ancillary occasional accommodation in a 'lad's flat'. An 'Equitred' manège lies on the northern part of the site with a large car parking area. The car park was originally the site of ancillary buildings associated with Black Knoll House and consists of a mixture of hardcore and demolition arisings.
5. The site is accessed along a single track lane off the north side of Rhinefield Road which also serves Black Knoll House and Black Knoll Cottage, a separate dwelling east of the car park and manège. All are now in separate ownership.
 6. South of Rhinefield Road is a mainly 20th century housing estate which forms part of the built-up area of Brockenhurst. The site is about 1 kilometre from the centre of the settlement where most services are available including a main line railway station.
 7. The character of the surrounding countryside is defined mainly by flat arable fields and grazing land with boundaries of native hedgerow and mature trees. The New Forest SPA and Special Area of Conservation lies a short distance to the north and east and the site does not adjoin the open forest, but the SPA includes grass verges each side of Rhinefield Road. The Council's Policies Map indicates that the remaining Black Knoll House estate and surrounding farmland, along with the whole of the defined village of Brockenhurst, is designated as a 400m buffer area from the SPA.
 8. The proposed development comprises a single storey dwelling with associated ancillary accommodation and comprehensive landscaping of the site. The house would be constructed in 2 main sections- a thatched living area and a linked flat-roofed sleeping block. A new area of water close to the house is intended as a wildlife resource. The dwelling would be located on the northern part of the site mainly on the existing car park in the area partly previously occupied by ancillary buildings. The existing arena and barn would be demolished and the larger part of the site restored in accordance with an ecological meadow restoration and wildlife gain scheme.

Policy background

9. The development plan consists of the New Forest National Park Local Plan (2016-2036) (LP) adopted on 29 August 2019. The most relevant strategic policies include SP1, which supports sustainable development proposals that will conserve and enhance the natural beauty, wildlife and cultural heritage of the NP and its special qualities. In achieving this aim, the policy recognises that sustainable development is that which amongst other things, enhances the landscape of the New Forest through high quality design which responds to the local distinctiveness of the area; and is resilient and responsive to the impacts of climate change through improved energy efficiency and making appropriate use of small-scale renewable energy.
10. Policy SP4 sets out the basic settlement hierarchy and indicates that outside the defined village boundaries (such as Brockenhurst), development will only be permitted if it meets certain criteria. The proposed scheme does not meet any of the listed criteria and is agreed to be in conflict with this policy. SP7 advises that development proposals will be permitted if they conserve and enhance the character of the New Forest's landscapes. Policy SP15 aims to protect areas of tranquillity and seeks to avoid unacceptable environmental

impacts in terms of noise and visual intrusion. It advises that development proposals that aim to remove visually intrusive man-made structures from the landscape will be supported. Policy SP17 indicates that built development and changes of use which would individually or cumulatively erode the National Park's local character, or result in a gradual suburbanising effect within the National Park will not be permitted. New residential development is controlled by policy SP19 which limits the locations and circumstances where new dwellings can be erected. It envisages an additional 800 dwellings being provided in the plan period including windfall development within defined villages and rural exception sites. The proposed scheme is agreed to fall outside any of the criteria set out.

11. The reasons for refusal also refer to development principles policy DP18 which seeks the highest standard of design. In considering the decision I have also taken account of the advice in the National Design Guide issued in January 2021.
12. The relevant statutory purpose of the National Park set out in the New Forest National Park Management Plan (NFMP) and the companion update Partnership Plan 2015-2020 and its emerging replacement is to conserve and enhance the natural beauty, wildlife and cultural heritage of the New Forest.
13. The revised National Planning Policy Framework (NPPF) was published in February 2019. Paragraph 172 of the NPPF advises that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.

The effect on the National Park

14. There is no dispute that no agricultural use of the buildings has ever occurred and that the lawful use of the site is as an Equestrian Centre. This was confirmed as Class D2 Assembly and Leisure Use according to a Lawful Development Certificate granted in 2006 (which since September 2020 falls within the new Classes E(d) and F2(c-d) as well as several newly defined 'Sui Generis' uses). Since 1992 the site has been used for assembly and leisure purposes including jousting meetings. It has also been used as the base for low-key equestrian activity such as trekking, though this did not make use of the extensive facilities the arena building has to offer. I give significant weight to the evidence from a previous occupier that use for equestrian purposes such as livery and hacking is now impractical because of the absence of any grazing land attached to the property and the costs of maintenance.¹
15. The appellants confirmed at the Hearing that if the appeal was unsuccessful then the buildings would be used for purposes within the permitted use class in order to provide a financial return. There is some corrosion to the base of some steel supports which is capable of repair and the buildings remain in reasonable condition. The large car park and location close to a settlement and the A337 main road from the A31 to Lymington, within easy reach of the railway network, suggests that the site itself would be attractive for large events.
16. However the access lane is single carriageway and events such as car boot sales, horse fairs or antique markets would be likely to lead to congestion and

¹ Brockenhurst Riding Stables 13 May 2019

parking pressure outside the site along Rhinefield Road and in other surrounding residential roads. Rhinefield Road has a semi-rural character with attractive open grass verges that have significant ecological value and which lie within the SPA. The variety of events which could potentially be held on the site means that attendance and demand would be hard to predict and there is a significant risk of parking causing congestion and direct harm to the verges as well as indirect harm due to vehicle emissions. Pressure from the volume of traffic, including large vehicles carrying livestock, would also detract from the experience of horse-riders, cyclists and pedestrians who use the road. Opportunities for quiet recreation are quoted in the LP as helping visitors in understanding and enjoying the special qualities of the NP. When they occur, use of the premises for large events would diminish that experience.

17. Moreover nearby occupiers draw attention to the noise caused by events held on the site including amplified music and announcements. It is understood that these are widely heard and significantly detract from the sense of remoteness and tranquillity that is important to local occupiers and attracts visitors. The LP and NFMP recognise tranquillity as a special quality of the NP.
18. The existing buildings can be clearly seen from Rhinefield Road through trees, particularly in winter. The arena building is a prominent feature in the landscape because of its bulk and around 13 metres height. Although utilitarian and agricultural in character, it now has no purpose associated with the surrounding land and there is no prospect of any such use. Its removal would enhance landscape character and improve the appearance of the area and conform to the aims of policy SP15.
19. The site comprises 'previously developed land' according to the definition in the 2019 NPPF². This represents a change from the definition in the 2012 NPPF that would have applied in the 2014 and 2015 applications for 2 dwellings on the site, one of which was refused at appeal³. In that case, substantial weight was attached to the Council's argument that the appellant would not take advantage of a fallback position because he had not done so on a different site in 2007⁴. Every site is different and the circumstances surrounding the weakness of the fallback position in that case are unclear. The different applicants in the case before me have provided written evidence from an equine boot sale organisation that is interested in a New Forest site. The Council would not be able to prevent use of the site for such purposes or any other purpose within the permitted use class and this represents a very different situation from that previously considered at appeal. I give significant weight to the prospect that the appellants would seek a return from the existing asset and that there is a real prospect of that not being a 'low key use' such as caravan and boat storage, that the Council considers could be acceptable (which would in any case require planning permission). Traffic, pollution and noise associated with such use would conflict with the statutory purposes of the NP.
20. Moreover, the removal of the extensive hardcore surfaces, artificial rubber manège, bund and arena and replacement with a substantial area of restored

² 'Land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings....'

³ APP/B9506/W/16/3145590

⁴ APP/B9506/A/07/2033186

meadow with a large area of water would have locally significant ecological benefits. The removal of about 45 tonnes of gradually decaying asbestos cement cladding and roofing would be beneficial.

21. Against these considerations, the disbenefits of a new house in the countryside arise from several policy conflicts including the possible effect of a new house on the distinctive character of the area (policy SP17). The effect would not depend on whether the proposed dwelling could be seen from the public domain. A new substantial individual dwelling would in principle add to the existing pair (Black Knoll House and Cottage) to create a small residential enclave. However the amount of built form overall would be very substantially reduced. The agricultural land around the site is 'buffer' land which has different characteristics compared with the open forest to the north. The dwelling itself would have roofs primarily constructed of natural materials which would be visually respectful of its countryside location.
22. There would be an additional dwelling which would cause harm, in principle, to intrinsic landscape character, however sympathetic it is in terms of design. That would represent a conflict with the aims of policy SP7. However, the design is sympathetic to the local landscape of fields and hedges. The single storey form and subdued natural finishes proposed would make the building visually subordinate despite its floor area, and it would not noticeably erode the character of the open agricultural landscape north of Brockenhurst. The environmental improvements including native planting would reinforce local landscape character. The removal of the existing buildings would open up a significant area of land on the southern part of the site and the creation of a meadow here would appreciably enhance local landscape character. The avoidance of potential for harm due to the permitted use is a very significant benefit to be considered in the balance.
23. There would be the usual domestic activity associated with any dwelling including comings and goings by people and vehicles using the existing access, but this would be insignificant compared to the potential for visual and aural disturbance that would be caused by the use of the site for the permitted use. There would be a degree of domestic paraphernalia, but this would be very difficult if not impossible to see from any public viewpoint and hard to perceive from the two existing nearby properties.
24. The floor area of the new dwelling would be substantially greater than anything permitted under policy SP21, but the purpose of the policy is to focus delivery towards smaller homes to ensure that the dwelling stock of the New Forest as a whole meets local demand and is balanced. The proposal conflicts with this policy, but that does not mean that the evident demand for larger dwellings should never be accommodated or that there could be no material considerations that mean a departure from this objective may be justified in the circumstances. In this case, the appellant has indicated, reasonably, that the investment in a larger property is necessary to enable the removal of the existing deteriorating buildings, the ecological improvement of the whole site and the creation of a new local landscape with ecological benefits.
25. The creation of a new dwelling outside the settlement boundary would conflict with the aims of the spatial strategy policies SP4 and SP19. Having said that, Brockenhurst is not a large settlement and this additional dwelling would, to a small extent, help in enhancing and maintaining the vitality of this rural

community. It would be within easy walking and cycling distance of the centre of Brockenhurst. The occupants would not require a car to carry out many day to day errands and the scheme would not conflict with the relevant objective of LP policy SP11.

Paragraph 79

26. Accepting some conflict with development plan policies, the appellants suggest that the scheme would satisfy the criteria set out in paragraph 79 of the NPPF. This advises that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply including e) *that the design is of exceptional quality, in that it is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*
27. The dwelling would be close to the main settlement of Brockenhurst, only separated from it by a tree belt and fields. It would also be close to 2 other existing dwellings. However, it would be hard to see from any public viewpoint and there would be a certain sense of visual isolation. For this reason, paragraph 79 remains relevant.
28. The design of the house draws its main inspiration from the surrounding natural environment and the way in which future occupiers would be able to appreciate and interact with it. The architectural quality of the scheme is not in doubt, reflecting the highest standards. Along with the meadow restoration and water feature, the development would unquestionably significantly enhance its immediate setting and would be sensitive to the defining characteristics of the local area. It would in particular involve a richness of experience for the occupants and visitors to the property, embodying a sense of 'delight' that is missing from much new development. I agree with the conclusions of the Design Review Panel, South West which unanimously supported the proposal. Some detail elements remain unresolved but these can be addressed by means of planning conditions.
29. However paragraph 79 requires another step, towards raising standards of design in rural areas. In this respect the scheme would inspire many but would have limited relevance to the particular needs of rural communities generally or elsewhere in the New Forest. The design does not appreciably reduce the need for energy through passive measures related to form, orientation or fabric. The scheme seeks to emulate local characteristics but there is no clearly expressed intention or scope to use locally sourced materials, though the appellants agreed that the proposed reed thatch could be replaced with a more appropriate long straw. To mitigate for its environmental impact the intrinsically inefficient floor plan and extensive glazed areas require significant investment in energy systems including ground source heat infrastructure and a buried energy store in the form of a large water tank. The challenge of achieving a healthy and comfortable yet efficient living environment is not unique to rural areas and such measures are becoming more common. No ground-breaking or innovative technology is proposed here. Other sustainable aspects of the design including rainwater harvesting, solar panels and a 'living' roof are very welcome but are not new.

30. The proposal to restore the natural ecological system carries considerable weight on this damaged site but the methodology proposed is not unusually innovative or unique. The Southampton University soil research project into using soil inoculation to accelerate and control the restoration of damaged land is an intriguing opportunity which will have implications for many other places where soil is degraded. I accept that this latter project is likely to be of considerable importance in many places, but it does not require an accompanying new house, which would remain long after the completion of the research.
31. The scheme would comply with the 7 criteria set out in the overarching sustainable development objectives of policy SP1. The architectural quality of the development reflects the commitment of the client and architect to create a dwelling with a unique relationship to its surroundings, conforming to policy DP18, but despite the merits of restoring ecological diversity and soil research, it would fall short of the requirements of paragraph 79. The scale of the overall project means that the benefits of landscape restoration are likely to be achieved and this carries important weight. The removal of the existing buildings and the proposed ecological improvements together carry very significant weight. Overall, the very appreciable material benefits of this scheme outweigh the conflict with the relevant parts of LP policies SP4, SP7, SP17, SP19 and SP21.

Other matters

32. A signed and dated S106 UU has been provided which ensures the provision of a mitigation contribution prior to commencement which would, amongst other things, facilitate rangers and information boards. These help to change the behaviour of people living in or visiting the SPA and thus avoid or mitigate potential adverse impacts on the ecological integrity of New Forest and Solent SPAs in accordance with the New Forest National Park Revised Habitat Mitigation Scheme SPD of July 2020. The UU also ensures the permanent cessation of use of the site for class D2 use purposes identified in the Certificate of Lawfulness granted in 2006. I consider that the provisions of the UU are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be necessary to make it acceptable. They meet the tests set out in paragraph 56 of the NPPF and Regulation 122 of the CIL Regulations (2010). The requirements of Regulation 123 and PPG have been satisfied. As such I give the UU significant weight and the requirements of LP policies SP5 and SP38 would be met.

Conditions

33. In addition to the usual time limitation, conditions are necessary to control the external materials and the details of landscaping and tree protection in the interests of the character and appearance of the area. The solar panel installation on the sleeping block, which were not shown on the application drawings, is specifically included to ensure that the panels are properly incorporated into the design. The biodiversity benefits are ensured by imposing conditions requiring details of ecological mitigation and enhancement, water consumption and nitrate mitigation as well as preventing occupation until preparatory groundworks across the whole site including the pond excavation have been completed. A restriction on permitted development rights and a

condition preventing use of ancillary accommodation for habitable purposes are necessary to prevent over-intensive development of the site.

34. A Construction and Demolition Management Plan is necessary in the interests of the living conditions of the adjacent occupiers and the avoidance of pollution. Details of external lighting are required in the interests of not further diminishing the dark skies for which the area is known. The site slopes slightly and approval of slab levels is necessary in order to prevent the building being any more prominent than it needs to be. The existing buildings need to be demolished to achieve the benefits of the scheme and occupation of the dwelling is prevented until this has been carried out. Finally, for the avoidance of doubt, the development is to be carried out in accordance with the approved drawings.

Conclusion

35. The site lies close to a settlement on previously developed land within the original curtilage of Black Knoll House, behind part of the remaining kitchen garden brick wall. The development would remove visually prominent non-agricultural buildings which have been and would be likely to be used for purposes harmful to the character of the area and to ecological interests. Considering the development plan as a whole, the benefits of the scheme outweigh the conflicts and lie firmly in favour of the statutory purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the New Forest.

36. For these reasons, the appeal should be allowed.

Paul Jackson

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

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Grahame Marshall

Jerry Davies

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DOCUMENTS

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Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Development shall only be carried out in accordance with the following plans:
Drawing nos: 1, TOPO-V2, 1820 PP-003, 1820 PP-004, 1820 PP-005, 1820 PP-006, 1820 PP-007, 1820 PP-010, 1820 PP-011, 1820 PP-013, 1820 PP-015, 1820, PP-016, 1820 PP-017, 1820 PP-018, 1820 PP-019, 1820 PP-020, 1820 PP-021, 1820 PP-022, 1820 PP-350, 1820 PP-800, Haha-v1, Jetty-v1B.

- 3) No development shall take place above slab level until specifications and details of the fenestration and roofing materials including solar PV and HW panels at a scale of not less than 1:20 have been submitted to and approved in writing by the New Forest National Park Authority. Development shall only be carried out in accordance with the details approved.
- 4) No development shall take place until a scheme of landscaping of the site has been submitted to and approved in writing by the New Forest National Park Authority. This scheme shall include:
 - (a) the existing trees and shrubs which have been agreed to be retained;
 - (b) a specification for new planting (species, size, spacing and location);
 - (c) areas for hard surfacing and the materials to be used;
 - (d) all other means of enclosure including a visually permeable fence along the north west boundary;
 - (e) a method and programme for its implementation, including the completion of the pond before completion of the dwelling;
 - (f) external lighting; and
 - (g) the means by which ongoing maintenance is to be ensured.
- 5) All hard and soft landscape works shall be carried out in accordance with the approved details. The works 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. 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 or species, unless the New Forest National Park Authority gives written consent to any variation.
- 6) The trees/hedges on the site which are shown to be retained shall be protected during all site clearance, demolition and building works in accordance with the measures set out in the submitted arboricultural statement (Arboricultural Assessment and Method Statement dated 29 May 2019 ref 19148-AA2-AS). Measures for their protection shall comply with the recommendations set out in the British Standards Institute publication "BS 5837:2012 Trees in relation to design, demolition and construction".
- 7) The dwelling hereby approved shall not be occupied until preparatory groundworks across the whole site including the pond excavation and lining and ground preparation in accordance with The Woodford Model specification 'Ecosystem by Design' has been completed.
- 8) Prior to the commencement of development (including site and scrub clearance), measures for ecological mitigation and enhancement (including timescales for implementing these measures) in the form of a Biodiversity Mitigation, Compensation and Enhancement Plan, shall be submitted to and approved in writing by the New Forest National Park Authority. The measures thereby approved shall be implemented in accordance with the approved timescale and then retained in perpetuity. The measures shall be based on the recommendations set out in the

Phase 1 Biodiversity Survey dated 21 June 2019 by New Forest Ecological Consultants approved as part of this planning application.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any re-enactment of that Order) no extension (or alterations) otherwise approved by Classes A, B or C of Part 1 of Schedule 2 to the Order, nor any garage or other outbuilding otherwise approved by Class E of Part 1 of Schedule 2 to the Order, nor means of enclosure otherwise approved by Class A of Part 2 of Schedule 2 to the Order, shall be erected or carried out.
- 10) Prior to the commencement of the development hereby approved a Construction and Demolition Management Plan (CDMP) shall be submitted to and approved in writing by the New Forest National Park Authority. The approved CDMP shall be adhered to throughout the demolition and construction period. The CDMP shall provide details of matters including:
 - i) A programme for demolition and construction activity
 - ii) measures to mitigate the impact of demolition and construction operations on nearby residential properties
 - iii) temporary lighting that will be used during the construction phase of the development
 - iv) the parking of vehicles of site operatives and visitors
 - v) loading and unloading of plant and materials
 - vi) storage of demolition arisings, and plant and materials used in constructing the development
 - vii) security fencing where appropriate
 - viii) measures to prevent mud from vehicles leaving the site.
- 11) None of the ancillary buildings including garages, log stores, research offices, garden equipment stores or plant rooms shall be used as habitable accommodation at any time.
- 12) No external lighting shall be installed on the buildings hereby approved until details have been submitted to and approved in writing by the New Forest National Park Authority. External lighting shall not be installed except in accordance with the approved details.
- 13) The development hereby permitted shall not be occupied until:
 - a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the New Forest National Park Authority. The development shall be carried out in accordance with and subject to the approved details;
 - b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the New Forest National Park Authority. The mitigation package shall

address all of the additional nutrient load imposed on protected European Sites by the development when fully occupied and shall allow the New Forest National Park Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites; and

c) Any measures forming part of that mitigation package have been carried out in accordance with the approved details.

- 14) The dwelling hereby approved shall not be occupied until all the existing buildings on the site have been demolished and all associated concrete and hardcore surfaces removed and all materials arising removed from the site.
- 15) No development shall commence until slab levels (AOD) have been submitted to the New Forest National Park Authority and approved in writing. The development shall be constructed in accordance with the approved details.