



Appeal Decision

Site Visit made on 4 May 2021

by Robin Buchanan BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2021

Appeal Ref: APP/P2114/W/20/3255053

Merrie Gardens, Newport Road, Lake, Sandown PO36 9PF

- 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 W S Group against the decision of Isle of Wight Council.
- The application Ref 19/01096/FUL, dated 21 September 2019, was refused by notice dated 14 February 2020.
- The development proposed is the erection of two industrial units with two residential flats above.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. With the appeal the appellant submitted a proposed drainage layout (the drainage plan) and proposed means of access, parking and turning (the highway plan). The Council has had an opportunity to comment on both plans. Having regard to the 'Wheatcroft Principles'¹ I consider that these plans do not materially alter the development proposed. There would therefore be no prejudice caused to interested parties and I have determined the appeal having regard to both plans. I deal with these considerations in 'other matters' below.
3. In its reason for refusal (RfR) No 1, the Council refers to a detrimental impact on the setting of a nearby listed building and the officer report states that the development proposed would be contrary to policy 'DM11 of the Island Plan'. This policy is not included in RfR No 1, though it is provided in the Council's appeal questionnaire. It is evident that this policy is material to RfR No 1 and I have therefore determined the appeal with regard to this policy.
4. The application form refers to the proposed 'industrial units' as including business class B1(c) light industrial use. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order). Having regard to regulation 4 of the Regulations, I have considered this appeal on the basis of the use classes specified in the Schedule to the Use Classes Order on 31 August 2020.

Main Issues

5. The main issues are:
 - the effect of the development proposed on the character and appearance of the area;

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

- its effect on the living conditions of future occupiers, having regard to noise, privacy, outlook and odour;
- its effect on the significance of the Merrie Gardens Farmhouse Grade II listed building (the Listed Building), with particular regard to its setting;
- its effect on the Solent and Southampton Water Special Protection Area (the SPA); and
- whether it would make provision for affordable housing.

Reasons

Character and appearance of the area

6. The appeal site is a parcel of vacant land with a portacabin at one end. It is located in a commercial area which lies either side of the A3056 Newport Road, on the edge of Lake. This part of Lake is within 'The Bay' Key Regeneration Area. On the north side of this road commercial development has expanded in recent years around the appeal site, mainly for retail, public hospitality or service uses. The appeal proposal would provide two ground floor units for B1(c) light industrial, B2 general industrial or B8 storage and distribution uses and two first floor 2-bedroom flats above. The building would have a shallow pitched profile metal roof behind raised parapet elevations. The upper part would be vertical timber boarding and the lower part brick, including two roller shutter doors. The remainder of the plot would be a car park and forecourt.
7. The development is speculative, insofar as no business occupier has been identified. However, any of the proposed B1(c), B2 or B8 uses would therefore be out of keeping and incompatible with the prevailing pattern and nature of commercial uses on the north side of Newport Road. While there is a small group of dwellings further to the east of the appeal site, most housing is on the south east side of Newport Road. All of this housing is distant and discrete from the appeal site. The flats would therefore be isolated on the appeal site, manifestly out of context, and at odds, with the surrounding commercial uses and the proposed industrial, storage and distribution uses. While a hotel is within this commercial area, it is not a permanent place of residence and is not located near any B1(c), B2 or B8 uses.
8. Some commercial buildings either side of Newport Road have flat roofs, or in part. However, a conventional pitched roof is the predominant form, including in the few residential properties that can be seen in views from the appeal site. I saw no precedent for the proposed shallow pitched parapet roof, nor has any been suggested to me by the appellant. It would as a result be out of keeping with the prevailing roof design of nearby buildings, including even if it gave the impression of a flat roof in views.
9. A nearby fast food restaurant/drive thru, and the hotel, incorporate timber boarding external materials, extending from ground to eaves level, though not in all elevations. In my judgement, it complements the service orientated function of these buildings and their contemporary design. Whereas, the proposed B1(c), B2 or B8 uses would have more in common with the commercial uses on the south side of Newport Road, which are mainly conventional industrial units or workshops. There is some variety in external materials at first floor level, but where brick has not been used profile metal panels prevail. I did not see any timber boarding at first floor level, or used at

all, nor has the appellant suggested any examples in this regard. In addition, the appearance of the narrow, relatively small size and regimented arrangement of windows for the flats, set into mainly blank first floor elevations, would give an overly commercial or utilitarian impression to this upper part of the building, at odds with its intended residential use. Moreover, the balconies would appear as an extraneous adjunct.

10. Considering the above, the appeal proposal would result in a discordant conflation of these uses and an incongruous design in this location. The development would be unduly conspicuous in public views from Newport Road, the spur road into the commercial area which runs past the appeal site and from the semi-public areas of the fast food restaurant/drive thru, hotel and the public house, including car parks and outdoor seating areas. I accept that the Framework does not seek to prevent or discourage appropriate innovation or change² and I appreciate that the appellant seeks to create a 'higher standard of appearance' than a 'standard industrial "shed"'³. However, in this appeal these objectives are not achieved for the reasons explained above.
11. I find that the appeal proposal would not enhance, protect or preserve visual amenity. It would cause significant harm to the character and appearance of the area. Consequently, it would not accord with Policies SP1 and DM2 of The Island Plan, the Isle of Wight Council Core Strategy (including Minerals & Waste) and Development Management Policies Development Plan Document, March 2012 (the CS). These policies seek to ensure that sites are suitable for development, including with regard to constraints such as adjacent buildings, views or other features which significantly contribute to the character of the area, and that it enhances the character and context of the local area and environment.
12. It would also conflict with Framework paragraphs 124 and 127(a), (c) and (e). These include that development should create high quality buildings and places, add to the overall quality of the area, be sympathetic to local character including the surrounding built environment and sustain an appropriate amount and mix of development.

Living conditions

13. Each flat would have a modest external balcony living space, accessed from an open plan kitchen, dining and lounge area, and commensurate provision of habitable room windows. I accept that residential accommodation can co-exist in some mixed use developments and that by definition⁴ B1(c) light industrial uses can be carried out in 'any residential area' without detriment to the amenity of that area, including by reason of noise and smell. However, the appeal site is not in a residential area. Moreover, the flats would be immediately above the B1(c), B2 and B8 units and bordered by a car sales/vehicle rental use, fast food restaurant/drive thru, hotel and public house, including car parks.
14. Equipment and machinery operated in the proposed units would therefore be unacceptably close to the flats, including directly below the floorplans and near the balconies and windows. Furthermore, movement of commercial vehicles on

² Framework paragraph 127(c)

³ Appellant's Design and Access Statement – page 2

⁴ The Use Classes Order

- the appeal site would generate a significant intensity and frequency of engine and related general non-residential activity and disturbance unacceptably close to the flats. This would be especially evident in the forecourt, when roller shutter doors were open or when the flat windows and balcony doors were open. This activity would therefore cause unacceptable environmental impacts, such as noise, vibration, dust or fumes and not be conducive to opening windows for ventilation. Moreover, some of the nearby commercial uses operate into the evening or night time and therefore potentially at more antisocial and disruptive times.
15. The front doors to the flats would be next to staff and roller shutter doors and would need to be accessed from the shared parking area and forecourt. Even if it were possible to conveniently sit out in the relatively small balconies, occupiers would face the forecourt (or towards other commercial premises or car parks), positioned relatively low down just above the tops of the roller shutter doors. There would therefore be little or no privacy for occupiers of the flats with regard to access to the flats or use of the parking area and balconies. Furthermore, the proximity of tall lorries (or loads) in the forecourt would unduly restrict outlook from habitable room windows and the balconies.
16. The appellant has not submitted a noise or air quality assessment, nor are there any substantive details before me for noise or odour attenuation or to mitigate affect on privacy and outlook. In the absence of any objective evidence to the contrary, there is therefore no compelling reason to conclude that the significant concerns that I refer to above could reasonably be overcome by a planning condition, as the appellant suggests. The flats might suit some individuals, such as workers who may value living and working at the appeal site, or nearby. This may also otherwise reduce the need to travel to work or to local services and facilities by car. However, there is no mechanism before me in this appeal to ensure that the flats would be occupied in this manner. Notwithstanding this, live/work accommodation should nonetheless provide satisfactory living conditions in the public interest and this would not be achieved in this appeal.
17. I find that the appeal proposal would result in an unacceptable adverse impact on residential amenity and be overbearing in that the proposed environment for residential use would be unpleasant and unduly hostile compared to normal expectations for satisfactory living conditions. It would cause significant harm to the living conditions of future occupiers of the flats having regard to noise, privacy, outlook and odour. Consequently, it would not accord with CS Policy DM2. This policy expects development to provide a safe environment, including by having regard to existing constraints such as adjacent buildings.
18. It would also conflict with Framework paragraphs 127(f), 170(e) and 180(a) which include that development should seek a high standard of amenity for future users, avoid adverse effects from unacceptable levels of noise and air pollution and ensure that it is appropriate for its location taking into account the likely effects on health, living conditions and quality of life.

Listed Building

19. On the evidence before me, the Listed Building originates from the late 17th to early 18th century as a farmhouse. Its significance derives from its physical form as an example of this building type, which would remain unaltered by the appeal proposal, and its historical value as once part of a farmstead complex

within a wider surrounding open agricultural landscape. Now used as part of the public house, the appearance of the Listed Building still displays the essence of an historic farmhouse, though due to subsequent development around it very little of its original immediate or wider historical and functional setting survives. Nonetheless, distances between adjoining buildings and views across open spaces, including the appeal site, allow it to be observed and its architectural interest and historic character appreciated. Moreover, the nearby commercial uses are largely innocuous in nature.

20. The proposed building would be reasonably modest in footprint, scale and massing and sited towards the rear of the plot and the side boundary furthest from the Listed Building. It would not therefore significantly erode views of the Listed Building. However, as explained in the first main issue above, the proposed B1(c), B2 and B8 uses would have belligerent environmental impacts. The proposed use of the appeal site in such close proximity to the Listed Building, within this part of its setting, would therefore have a significant negative affect on the affinity and serenity of the setting and consequently unduly detract from the way in which the Listed Building is experienced.
21. The Listed Building is a designated heritage asset and accordingly great weight should be given to its conservation⁵. Any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification⁶. The adverse affects of the development on the special architectural and historic interest of the Listed Building would be localised and as a result would cause less than substantial harm to the significance of this designated heritage asset. This harm should be weighed against the public benefits of the proposal⁷.
22. The delivery of two flats would be aligned with the Government's objective to 'significantly boost' the supply of homes and to meet the needs of groups with specific housing requirements, such as in the size and type of housing⁸. The appeal proposal would create new jobs and this would be consistent with the Government's objective to support economic growth⁹. Commensurate with the scale of the proposed development, these would be modest social and economic benefits. I attach limited weight to these considerations, which would not therefore provide clear and convincing justification or overcome the harm that I have identified to the Listed Building.
23. I find that the appeal proposal would have a detrimental impact on the setting of the Listed Building and would detract from its special architectural and historic interest. It would not preserve the Listed Building or its setting¹⁰. Consequently, it would not accord with CS policies SP1, DM2 and DM11. These policies seek to ensure that sites are suitable for proposed development, including with regard to constraints such as adjacent buildings or other features which significantly contribute to the character or context of the local area, and should positively conserve and enhance the special character of the Island's historic and built environment, including heritage assets and their settings. It would also conflict with Framework paragraphs 193 and 194.

⁵ Framework paragraph 193

⁶ Framework paragraph 194

⁷ Framework paragraph 196

⁸ Framework paragraphs 59 and 61

⁹ Framework paragraph 80

¹⁰ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

24. In its RfR No 1, the Council has referred to CS Policy DM12. I note that this policy is concerned with 'landscape, seascape, biodiversity and geodiversity'. I do not, therefore, consider this policy to be relevant to this main issue.

Special Protection Area

25. The appeal proposal would be within a zone of influence of the SPA, which is an internationally important designated habitat for birds. Accordingly, a significant effect on the SPA would be likely to occur from the proposed net increase in residential development at the appeal site, leading to an increased population, in an area where the inhabitants of the development would be within such proximity to the SPA that they would be likely to visit it for recreational purposes. The Council has undertaken a Habitats Regulation Assessment, including Appropriate Assessment, and has adopted a 'Solent Recreation Mitigation Strategy' (the Strategy)¹¹. I note that the main parties agree that subject to securing appropriate mitigation (in the form of a requisite financial contribution) by a suitable planning obligation, the appeal proposal would not have a significant adverse effect on the ecological integrity of the SPA.
26. However, while I understand that the appellant 'agrees to the provision of a financial contribution' in respect of the SPA, that 'a S106 Agreement will be provided to the Planning Inspectorate' and considers that this would address the Council's RfR No 6¹², there is no planning obligation before me to this effect in this appeal¹³. In these circumstances, and therefore the absence of suitable mitigation, the development would adversely affect the nature conservation interest and integrity of the SPA.
27. I find that the appeal proposal would cause significant harm to the SPA. Consequently, it would not accord with CS Policy DM12. This policy includes that development should protect and avoid adverse impacts on the integrity of designated sites and provide appropriate mitigation measures. It would also conflict with the Strategy, and with Framework paragraphs 170(a) and 175(a) which indicate that development should protect and minimise impacts on sites of biodiversity value, including SPAs, and adequately mitigate harm to biodiversity.

Affordable housing

28. I note that the Council's Affordable Housing Contributions Supplementary Planning Document, March 2017 (the SPD) indicates that a 'lack of delivery of affordable housing has become a significant issue for the island'¹⁴ and that the Council considers that there is a need to 'increase the amount of affordable housing'¹⁵. On the evidence before me I have no reason to reach a different view in these respects. The proposal is for less than 15 new homes and accordingly CS Policy DM4 expects a financial contribution towards providing affordable housing off-site elsewhere. The SPD confirms that this should be secured by a suitable planning obligation¹⁶.

¹¹ Prepared by the 'Solent Recreation Mitigation Partnership' of local authorities and conservation bodies, December 2017

¹² Appellant's Appeal Statement prepared by LRJ Planning, June 2020 - paragraph 6.35.

¹³ Planning Inspectorate Procedural Guide Planning Appeals - England, March 2021 - paragraphs N.2.1 and N.2.2

¹⁴ SPD paragraph 2.14

¹⁵ CS paragraph 7.64

¹⁶ SPD paragraph 3.35

29. However, while I understand that the appellant also agrees to the provision of a financial contribution for affordable housing and aims to provide a legal agreement which it considers would address the Council's RfR No 5, there is no planning obligation before me to this effect in this appeal. In these circumstances the development would not deliver affordable housing and would therefore be at odds with the Council's adopted planning and housing strategy.
30. I find that the appeal proposal would not make provision for affordable housing. Consequently, it would not accord with CS Policy DM4 and would conflict with the SPD. It would also conflict with Framework paragraphs 59, 61 and 62 which seek to meet the needs of groups with specific housing requirements, including for affordable housing.

Other Matters

31. Some interested parties objected due to the absence of details for commercial and residential storage of waste and recycling and also because of increased traffic generation and its impact on the local highway network. There is no compelling evidence before me to suggest that satisfactory details for such storage could not be submitted to and approved by the Council using a planning condition, were I minded to allow the appeal.
32. The spur road that connects the appeal site to the Newport Road is sufficient in width and standard for two-way traffic, including commercial vehicles, and includes raised pavements and street lighting. I also saw that the Newport Road is a busy main road, subject to a 30mph speed limit at this point with street lighting. Visibility sightlines from the spur road onto the roundabout are restricted to an extent in both directions. Nonetheless, I saw that approaching traffic is apparent as it enters the roundabout, in particular in the more imminent nearside direction from the right. I note that the Council, including as Highway Authority, did not object for these reasons and in the absence of any objective evidence to the contrary, I have no reason to differ.
33. On the evidence before me, a surface water sewer and a foul/combined sewer run underneath the appeal site and connect to a wider sewer network. While it is not clear whether either sewer is a public sewer, the drainage plan shows that the layout and siting of the proposed development would in principle allow for connections to be made to both sewers. I note that the Council has not objected to these drainage proposals. There is therefore no substantive evidence before me to suggest that satisfactory details of a drainage strategy (including to safeguard against potential contamination from the proposed B1(c), B2 and B8 uses) could not be submitted to and approved by the Council using a planning condition, were I minded to allow the appeal. If so, this would address the Council's RfR No 3 and on this basis the absence of harm in this regard is a neutral factor in my decision.
34. The highway plan shows vehicular access to the appeal site using the dropped crossing that passes through the footway at the roadside frontage of the appeal site. There would be 6 car parking spaces and a turning area within the appeal site and pedestrians would use the existing footway which links to the wider highway network. I note that the Council¹⁷ considers that these details are acceptable in highway safety and design terms and overcome its RfR No 4. On

¹⁷ 'Highways Representation – Planning Appeals Statement', prepared by Island Roads, 11 August 2020 and the Council's appeal questionnaire

the evidence before me, I have no reason to find otherwise. The absence of harm in this regard is a neutral factor in my decision.

35. The flats would be finished to a high specification and internal space standards and levels of daylight would be satisfactory. The absence of harm in these regards is also a neutral factor in my decision.
36. The appellant considers that the Council has less than a 5-year housing land supply (5YHLS), though does not suggest what the quantum of shortfall is, and that against the Government's Housing Delivery Test (HDT) the delivery of housing was substantially below¹⁸ (ie less than 75%) the Council's housing requirement over the previous three years. I note that the Council has not disputed either matter and its RfR No 1 states that the two proposed residential units would have 'a minimal impact on achieving the Island's housing supply'. While the extent of the shortfall has not been established, on the evidence before me I nevertheless consider that the Council is unable to demonstrate a 5YHLS or meet the HDT.
37. Accordingly, Framework paragraph 11(d)¹⁹ is engaged as the policies which are most important for determining the appeal are out-of-date. This means that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed²⁰. In this case, I have found that the proposal would cause less than substantial harm to the significance of a designated heritage asset and would adversely affect the SPA. In my judgement, the policies set out in Framework paragraphs 193, 194 and 196, regarding designated heritage assets, and paragraphs 174 to 177, regarding the protection of habitat sites, provide clear reasons for refusing the development and the presumption in favour of sustainable development does not apply.

Planning Balance and Conclusion

38. As explained in the main issues above, the appeal proposal would cause harm to the character and appearance of the area, to the living conditions of future occupiers of the flats and to the SPA and would not make provision for affordable housing. I attach substantial weight to each of these considerations. It would also have a detrimental impact on the significance of the Listed Building. I give great weight to this harm. The proposed development would not therefore accord with the development plan overall.
39. The proposal would provide two new homes and notwithstanding the 5YHLS and HDT position, I give limited weight to this benefit. It would also provide some new employment opportunities and I attach limited weight to this benefit.
40. There are no material considerations which indicate that my decision should not be taken otherwise in accordance with the development plan. For the reasons given, I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR

¹⁸ Framework paragraph 215(c)

¹⁹ Footnote 7

²⁰ Framework paragraph 11(d)(i) and footnote 6