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## Appeal Decision

Site visit made on 13 December 2021

**by Mrs H Nicholls FdA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 December 2021**

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**Appeal Ref: APP/B1740/W/21/3279106**

**Penny Fiddle, Betsy Lane, Bransgore BH23 8AQ**

- 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 Ali Mohajerani against the decision of New Forest District Council.
  - The application Ref 20/11051, dated 24 September 2020, was refused by notice dated 10 May 2021.
  - The development proposed is use of wooden garden cabin for holiday let (Retrospective).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description of development has been taken from the Council's decision notice as it more accurately describes the nature of the proposal as detailed in the submitted plans. The fact that the building has been constructed already and used for holiday letting purposes has been taken into consideration in reaching my decision, although the reference to 'retrospective' does not refer to a specific act of development.

### Main Issues

3. The main issues are:
  - the effects of the proposal on the living conditions of future holiday guests, neighbouring occupiers within the host dwelling and at 'Thatch View', Nos 6 and 7 Canute Drive and 'Merleswood', with particular regard to privacy, noise and disturbance.
  - the effects of the proposal on the holiday guests and the occupiers of the host dwelling in terms of the adequacy of the respective garden areas;
  - whether the location of the site accords with local and national policies that seek to permit new development in areas that are at the lowest risk of flooding unless no other sequentially preferable sites are available;
  - the effect of the proposal on protected trees; and
  - the effect of the proposal on the New Forest Special Area of Conservation, the New Forest Special Protection Area, the New Forest Ramsar site, the Solent and Southampton Water Special Protection Area, the Solent and Southampton Water Ramsar site, and the Solent Maritime Special Area of Conservation (the protected sites).

## Reasons

### *Living conditions of neighbouring occupiers*

4. The appeal building is sited to the rear of the host dwelling and is accessed via a narrow pedestrian path which runs past the side of the dwelling. Views of the front garden are largely prevented by a wooden fence of around 1.8 metres high. However, the fence stops short of the dwelling itself and it is necessary to pass directly by the side elevation of the dwelling, enabling views into a side window. The rear garden is also open to views of passers-by, although there is a partial fence between the garden and the front elevation of the building which prevents a direct window-to-window relationship.
5. Due to the manner in which holiday guests would have to directly pass by the side of the dwelling and would be permitted views into the rear garden which should be a largely private space, the use of the building for holiday letting purposes would be harmfully intrusive to occupants of the host dwelling. Similarly, as residents within the host dwelling and its rear garden would have sight of guests arriving and departing from the building, and when using the outdoor amenity space, the guests would also feel a sense of being overlooked from close quarters.
6. Due to the enclosure of the site around the building by high fences to the sides and rear, there would be no direct privacy implications for any occupiers of dwellings adjoining the site. However, holiday guests returning to the building later in the evening, maximising the use of the outdoor space whilst in holiday mode, where the playing of music and a party atmosphere are more likely than when compared to a normal ancillary domestic use, would result in a detectable change in character and would be disruptive to neighbouring occupiers.
7. In view of the above, the proposal would be harmful to the living conditions of occupiers of the host dwelling and neighbouring occupiers, contrary to Policy ENV3 of the LPP1<sup>1</sup>. This Policy seeks to ensure new development avoids unacceptable effects by reason of visual intrusion or overbearing impacts, overlooking, shading, noise and light pollution or other adverse impacts on local character or residential amenity.

### *Adequacy of garden areas*

8. The host dwelling benefits from a large front garden which is largely enclosed and maintains a degree of privacy from the road. The rear garden has now been subdivided into a smaller, relatively flat area of lawn, with a high fence to subdivide it from the separate space surrounding the building. The building has a modest path around the sides, front and rear. It does however have a small sitting-out area under its overhanging canopy, and an area to the side on which artificial grass has been laid.
9. Due to the manner in which long lengths of fencing have been constructed to separate the gardens from the building and its access path, they feel cramped and enclosed, and their useability has been restricted. This is harmful to the occupiers of the host dwelling and thus contrary to Policy ENV3 of LPP1 which seeks to secure high quality development that is sympathetic to its environment and context.

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<sup>1</sup> New Forest District Council Local Plan Part 1: Planning Strategy (2009)

10. If the building were to be used solely as a holiday let, the small sitting out area and adjoining space would likely be sufficient for future guests given the basic accommodation on offer and likelihood that recreational pursuits would largely be undertaken away from the site.

#### *Flood risk*

11. The Council indicate that the appeal site is partly within Flood Zones 2 and 3, both of which are at a higher risk of flooding than Flood Zone 1.
12. The National Planning Policy Framework (the Framework) (paras 161 and 162) sets out that in areas that are known to be at risk of flooding, a 'sequential test' should be applied to proposals for development. It states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Furthermore, the Framework advises that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Policy CCC1 of the LPP1 sets out that vulnerable developments will not be permitted in areas at risk of flooding unless in accordance with the sequential and exceptions tests. A holiday use is a use that falls within the 'vulnerable' category.
13. The Planning Practice Guidance advises that the area to apply the sequential test across will be defined by local circumstances relating to the catchment area for the type of development proposed. Given the limited scale of the proposal and the extent of the Council's jurisdiction, it would appear likely that there are reasonably available development sites suited to the proposal with a lower probability of flooding than the appeal site.
14. Whilst the appellant highlights that the use of the building would be seasonal (March – September), and would not present as much risk to future guests on that basis, there is limited evidence to this effect through the submission of a Flood Risk Assessment.
15. In view of the above, owing to the suboptimal location of the development in terms of flood risk compared to land solely within Flood Zone 1, the proposal does not accord with LPP1 Policy CCC1 or the Framework in terms of seeking to locate new development in areas that are at the lowest risk of flooding.

#### *Protected trees*

16. The remaining protected tree is in the front of the property, unaffected by the proposal. The evidence alludes to the potential effects on future occupiers of the building and restricted openness of the amenity space due to the number and overhanging nature of trees surrounding the site.
17. I agree that the building and amenity space feel slightly crowded and shaded by the volume of tree canopies overhanging the site. However, holiday guests would not be aware of the extent of this until their arrival, and would not likely raise a complaint about the conditions as a direct effect of the tree shading. It would seem unlikely that any short-term holidays would be so affected as to warrant tree works, extra to those that should be undertaken in the interests of good tree management in any event.
18. As such, the proposal would not result in harm to protected trees or other trees within or adjoining the site. It would therefore comply with Policy ENV3 of LPP1 which seeks to ensure new development is sympathetic to the environment in

terms its relationship to adjoining buildings, spaces and landscape features, including trees.

### *Protected sites*

19. The appeal site is within the zones of influence of the protected sites. It cannot be ruled out that residential development in this location, both individually and cumulatively with other schemes, would have significant effects on the features of interest of the protected sites due to increased recreational use in respect of the New Forest protected sites and through increased nitrate loading from wastewater on the Southampton and Solent protected sites.
20. The Council indicate that the recreational impacts could be mitigated through the submission of a planning obligation made under S106 of the Town and Country Planning Act 1990, and that the appellant was made aware of this. The appellant's statement also highlights the likelihood that guests would use other areas of the New Forest for recreational activities, negating the need for a large on-site provision. However, no S106 has been submitted.
21. In respect of the increased wastewater, the appellant has sought to demonstrate that the proposal would avoid impacts on the River Avon Special Area of Conservation through discharging to the Christchurch Waste Water Treatment Works as was the case on a scheme nearby. Firstly, harm to the River Avon SAC has not been raised in respect of this appeal. Secondly, I have limited evidence about the discharge of the scheme's wastewater to an area other than the Solent and Southampton Water Protected Sites, or the related nitrate implications.
22. In any event, as the circumstances that could have led to the granting of planning permission are not present, it is not necessary for me to ascertain the appropriateness and delivery of the mitigation within an Appropriate Assessment. Consequently, I have not taken this matter further.

### **Other Matters**

23. I note that the use of the building is intended to take place from March to September each year. However, the limitation of the use between these times would not mitigate the identified harm, particularly not in relation to the privacy effects on occupiers of the host dwellings given that the same period would be when the garden would be most likely to be used.

### **Planning Balance and Conclusion**

24. I accept that the proposal has an appearance and siting similar to a garden shed or outbuilding and that the Council allege it is permitted development if used solely for purposes incidental to the dwelling. However, the nature of holiday uses are very different and have the potential to affect a far greater number of people, including existing and future occupiers of the host dwelling.
25. Whilst I do not consider that there would be harm in all instances raised by the Council, I have identified harm to future guests, neighbouring occupiers, including those in the host dwelling, a curtailment of garden amounting to poor design, and, in the absence of robust evidence to the contrary, harm to the protected sites. For the reasons set out, the proposal is in conflict with the development plan, when taken as a whole.

26. The proposal would result in economic benefits to local businesses, through guests spending for the duration of their stays. The appeal site is also well located for access to a range of facilities on foot, including a shop and public house. However, neither these benefits nor the other factors advanced by the appellant amount to material considerations which indicate that a decision should be taken other than in accordance with the development plan.
27. For the reasons above, the appeal is dismissed.

*Hollie Nicholls*

INSPECTOR