

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: 5 January 2022

Appeal Ref: APP/B1740/W/21/3278116

Land rear of Maylands, 98 Ashley Lane, Hordle SO41 0GA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs Berthiaume against the decision of New Forest District Council.
 - The application Ref 21/10463, dated 26 March 2021, was refused by notice dated 21 May 2021.
 - The development proposed is outline application for the erection of 3 dwelling houses of max 2 storeys in height with access from existing driveway to be increased in width.
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Decision

1. The appeal is dismissed.

Main Issues

The main issues are:

- whether the development would be inappropriate development within the Green Belt and whether it would harm its openness, having regard to the Framework and policies in the Development Plan;
- the effect of the proposed development 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, hereafter referred to as the 'Protected Sites'; and
- if the development would be inappropriate, whether the harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate and effect on openness

2. The appeal site is located to the rear of dwellings fronting Ashley Lane. The Green Belt designation washes over the site and separates the edge of the settlement of Hordle from the New Forest National Park to the north, including the adjacent fishing lakes. The appeal site is also outside of, but adjoining the settlement boundary for the village of Hordle. To the east is some open grazing land used for the keeping of horses.

3. A collection of single storey buildings and hardsurfaced space, formerly an equestrian ménage, adjoin part of the eastern boundary of the site and are also in the appellant's ownership. The buildings appeared to be in commercial use and the ménage now used as a parking area in association therewith.
4. Policy ENV2 of the Local Plan Part 1¹ sets out that the openness and permanence of the Green Belt will be preserved with particular regard to its stated purposes and those of national policy for the Green Belt. It goes on to state that proposals therein will be determined in accordance with national planning policy, i.e. the National Planning Policy Framework (the Framework).
5. The Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. All new buildings are to be considered inappropriate, save for a limited number of exceptions, including agricultural and forestry-related buildings, sports or recreational facilities, limited affordable housing, limited infilling in villages and the partial or complete redevelopment of previously developed land. The construction of new open market dwellings on greenfield land, as proposed in this case, should therefore be regarded as inappropriate.
6. Though the appellant asserts that the proposal constitutes limited infilling within a village, the term 'infilling' is not defined in either the Framework or either parts of the Local Plan. The Council have conceded that the appeal site is in a village location, on the edge of Hordle, and that the site extent would restrict the size of the scheme to a 'limited' scale. However, it does not agree that the proposal constitutes infilling due to its backland nature, with residential development only adjoining the southern boundary, and with northern and eastern extents of the site largely adjoined by undeveloped land.
7. The eastern edge of the site is partly defined by urban form, with the existence of the commercial buildings providing hard features at least some way into the site. However, the former ménage, turned car park, with unknown planning status in relation to such, is a largely open feature, as is the narrow wedge of land beyond it to the north, on which there appeared to be a number of electricity hook 'ups'.
8. Whilst the substantial tree belt between the site and the National Park to the north, along with the additional green buffer zone, would provide an enclosing feature to the northern edge of the site, the eastern edge would only be partially enclosed by built form. As such, the proposal would not infill an existing gap within the urban form; it would create a new hard edge at the north-eastern fringes of the Green Belt in this location and would represent a form of incremental urban sprawl that Green Belt policies seek to prevent.
9. I have considered the limited evidence in relation to an alternative case² for the construction of two dwellings at Laurels Close which the appellant asserts provides justification for the appeal scheme. It would appear that that site was more obviously sandwiched between dwellings on either side and its rear boundary would not have extended beyond the existing rear boundaries of those neighbouring dwellings. The appeal site differs in character to that site. Whilst the partial or complete redevelopment of the previously developed land owned by the appellant may present an opportunity for development within the

¹ New Forest Local Plan Part One: Planning Strategy (2020)

² Planning ref: 19/11065

Green Belt, or potentially provide a more robust enclosing feature of the urban form, the current proposal does not represent infilling in a manner similar to the proposal at Laurel Close.

10. I also note that the appellant has referenced allocations for larger housing schemes elsewhere on the periphery of Hordle which were in the Green Belt. The Council indicate that the land forming those respective allocations was taken out of the Green Belt and the settlement boundary redefined as part of the Local Plan formulation. As the extent of the Green Belt was adapted to accommodate the area's strategic growth needs, the policy circumstances differ entirely from the appeal scheme which is for a minor development on an unallocated site entirely within the Green Belt.
11. Therefore, in my view, the introduction of dwellings on a greenfield site within the Green Belt would be harmful to the openness of the Green Belt in both a spatial and visual sense. Whilst there are limited public viewpoints from which the reduced openness of the site would be perceptible, it would still be noticeably urbanised compared to the expansive open and green qualities it offers in views from neighbouring private land at present.
12. In view of the above, the proposal would represent inappropriate development in the Green Belt and would harm its openness, contrary to, in particular, Policy ENV2 of the Local Plan Part One and contrary to the policies of the Framework.

Protected Sites

13. The appeal site is within the zones of influence of a range of protected sites. Significant effects on the features of interest of the protected sites cannot be ruled out from residential development in this location, both individually and cumulatively with other residential developments. Even if a scheme is found not to necessitate the submission of an Environmental Impact Assessment (EIA), it can still result in likely significant effects on protected sites.
14. At a very basic level, the New Forest Protected Sites can be affected by increased recreational use by new residents and possible air quality effects from increased vehicle emissions. There are agreed mitigation strategies in place to address potential recreational effects and to enable air quality monitoring. The Solent and Southampton Waters Protected Sites can be affected by increased nitrate loading from wastewater associated with new overnight accommodation that discharges to the same. Due to the newness and complexity of this issue, there is no agreed mitigation strategy in place, although such a strategy is in the process of being prepared.
15. Subject to an appropriate assessment concluding the suitability of the same, a planning obligation under S106 of the Town and Country Planning Act 1990 could be used to address the recreational and potential air quality effects. Due to issues with the mortgage company that have an interest in the appeal site, no such S106 has been able to be completed for the appeal scheme. Though it is possible that with negotiation, this matter could be addressed through a completed S106, in the absence of such I can only conclude that unmitigated harm would result from the scheme.
16. In respect of the increased wastewater, no project-specific mitigation proposal has been offered to achieve nitrate neutrality. Until such time as a mitigation strategy has been devised and agreed for wider application, the Council

suggests that a negatively worded condition should be imposed and another appropriate assessment undertaken on submission of details to discharge such.

17. The Planning Practice Guidance (PPG) advises that conditions preventing development commencing should not be imposed unless there is certainty about the action in question being performed within the time limit imposed by the permission. The PPG also advises not using such conditions to secure financial contributions unless in exceptional circumstances, which do not appear present in this case. Though the appellant initially agreed to the imposition of such a condition, the Council indicate that there is a degree of uncertainty about whether it could ever be discharged given the uncertainties about how the nitrates issue could be satisfactorily resolved. In short, the imposition of such a condition would be unreasonable and the appellant has since changed views on the in-principle acceptance of the condition.
18. 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 at this stage or again in the future. Consequently, I have not taken this matter further.

Whether very special circumstances

19. The appellant asserts that the dwellings would provide an important contribution to the housing stock on a site which would be less disruptive, on a more manageable scale and on a ready-serviced site when compared to some of the larger allocated sites in the Local Plan. The sustainability of the site in close proximity to village amenities, bus and train links is also highlighted.
20. Attention has also been drawn to the absence of objections on the appeal proposal from consultees in respect of the ecological and arboricultural effects. Similarly, the National Park Authority did not object to the proposal. In short, there would be no other harms aside that to the Green Belt. I also note the anticipated minor improvements to the site access from its widening to allow two-way traffic, in place of the single lane width presently offered.
21. The Council indicate that very special circumstances could potentially be demonstrated by the provision of affordable housing to meet local needs that could not otherwise be provided, the appeal scheme is for a low number of open market homes without any provision of affordable housing.
22. Whilst no specific figure has been attributed to the degree of deficit in the evidence, the Council has indicated that its housing land supply falls short of the five year requirement set by the Framework, and that this situation is unlikely to be addressed in the short term. Though footnote 7 of paragraph 11 d) i) of the Framework provides protection to the Green Belt as an area of particular importance, thus preventing the engagement of the 'tilted balance' for at least this reason, the absence of a five year supply of housing land still adds weight in support of the appeal scheme which would deliver a small but valuable contribution to meeting the deficit, with associated economic and social benefits.
23. However, taking into account all of the above, I do not consider that very special circumstances that clearly outweigh the Green Belt harm exist in this case.

Conclusion

24. For the reasons set out above, the appeal is dismissed.

Hollie Nicholls

INSPECTOR