



Appeal Decision

Site visit made on 1 February 2022

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 8th February 2022

Appeal Ref: APP/P2114/W/21/3274738

Hillside, 151 Mitchell Avenue, Ventnor, PO38 1DR

- 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 Gert Bach Nielsen, Hillside House Ventnor Ltd., against the decision of the Isle of Wight Council.
 - The application Ref 20/01553/FUL, dated 14 September 2020, was refused by notice dated 18 December 2020.
 - The development proposed is Eco lodge.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For clarity I have added the house number to the location details.
3. In July 2021 a revised National Planning Policy Framework (the 2021 Framework) was published. The Parties have had the opportunity to address this.

Background and Main Issues

4. The appeal site (Hillside) is within the Ventnor Conservation Area (the CA) and Hillside House is a Grade II Listed Building (the LB). Although these matters are not specifically referred to on the decision notice I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA and to have special regard to the desirability of preserving the setting of the LB.
5. The main issue is the effect of the proposal on the character and appearance of area in particular the Isle of Wight Area of Outstanding National Beauty (the AONB); the CA; the LB; the Ventnor Down Site of Special Scientific Interest (SSSI) and the Isle of Wight Downs Special Area of Conservation (SAC) taking account of siting, design, trees and the impacts from construction.

Reasons

6. Ventnor slopes steeply down from the chalk downland which is an imposing backdrop to the town of Ventnor with very steep south facing slopes as mosaics of chalk grassland and predominantly Holm Oak woodland. Hillside is at the top of the town on the edge of the St Boniface Down woodland in the Undercliff landscape character area of the AONB, characterised by its secretive ambience and the importance of the woodland boundary. The extensive AONB has a complex and diverse landscape. The geology; habitats; historic and current

land use and settlement pattern; boundary features; peace, tranquillity and 'dark skies'; traditions, customs and cultures; all add to its special qualities and 'sense of place'.

7. Hillside is elevated above Mitchell Avenue. Levels near the LB and The Stables are generally relatively flat. The ground levels to the western and northern boundaries rise sharply by some 4m. Pedestrian access to the higher ground is by a path at the side of The Stables but due to the steep slopes the area is largely unused. However, it is a setting for the buildings and serves the useful purpose as a transition zone between the built up area of Ventnor and the Downs above.
8. The lodge would be sited high up on the steep slope. The proposal includes rooflights and large glazed doors opening onto a terrace which would generate light in the hours of darkness well above the levels at which light is generated at present and above the proposed ivy-clad balustrade. Light spill from these together with activities on the raised terrace would be very intrusive in the position proposed and would cause harm to the dark skies and tranquillity of this part of the AONB.
9. A condition controlling light spill might be sufficient to minimise harm from rooflights. However, future occupiers of the self-contained accommodation in the lodge would, in all probability, seek to open the doors and use the terrace including during hours of darkness. The access steps would also require illumination. Accordingly I consider it unlikely that a condition would satisfactorily mitigate the harm caused by light spill and use of the terrace.
10. Built development and activity at this higher level would encroach upon and have a harmful effect on the undeveloped peaceful and tranquil character of this part of the AONB. For this reason I consider the lodge would not be sensitively located and would not avoid or minimise harm to the landscape and scenic beauty of the AONB which has the highest status of protection.
11. Hillside is in the "Residential Suburban" Character Area of the CA. This is characterised by substantial distinctive properties within large gardens set against the landscape of the downs and forming a backdrop to the lower levels of the town. Hillside is a typical example. Buildings are on level terraces or natural platforms between steep slopes which provide the green gaps and wedges between the buildings. The area was substantially developed between 1850 and 1890 and is little changed today. This consistency of period and the open spaces and trees are defining characteristics of this area and the Ventnor CA as a whole and contribute to its significance.
12. Hillside was probably the first Ventnor hotel following the development of the Ventnor resort from about 1830. It continues to attract visitors as an award winning, luxury, boutique hotel. As well as the main LB there is the separate Stables, built around 2012, used as garages and visitor apartment, parking areas and open grounds. Due to the distance between them and the topography the proposed lodge would not harm the setting in which the historic and architectural character of the LB is experienced.
13. At the time of my visit there was some ground cover and a few trees evident within where the lodge would be sited. Previous consents have allowed for the removal of, and works to, some trees. The proposed lodge would be sited behind The Stables, would not be on level ground, and the terrace would be

cantilevered towards the roof of The Stables contrary to the prevailing character of the CA. Even taking account of the proposed green roof and the partial burying of the structure, the extensive engineering works required, the stacking of the lodge above The Stables, the loss of the open transition zone and potential harm to trees would harm the open and consistent character of the CA.

14. Whilst in the terms of the Framework, due to the small scale of the proposal this harm would be less than substantial, it would be real and enduring. There would be public benefits arising from the proposal in terms of employment during construction and support for the tourist industry. However, these would not be sufficient to outweigh the environmental harm to the CA that I have identified. I conclude the proposal would not preserve or enhance the character or appearance of the CA.
15. The proposal would require significant engineering works. According to the Desktop Study: Ground Stability 2020 (the GS Study) the ground behind The Stables' retaining wall is sloped at some 1:2 - 1:3, rising up to the property boundary. The GS Study concludes that overall ground stability would not be compromised. However, the final detailed design of any new foundation system has yet to be determined. The GS Study anticipates that the ground floor of the building would be on an elevated base formed of a stilted or piled arrangement utilising a new retaining wall or the existing retaining wall. The existing retaining wall is said to include several ground anchors extending some 3-5m into the slope behind but their positions have yet to be established. In the absence of more details of these, and of the details of construction of the proposed lodge, I cannot confidently conclude they would not be disturbed or that the stability of the slope would be preserved.
16. The SSSI and the SAC overlap and include St Boniface Down, Bonchurch Down and Luccombe Down. The occurrence of heathland on deep gravel overlying chalk, the naturalised holm oak woodland and the juxtaposition of heath and chalkland vegetation are an unusual biological feature. Hillside is directly adjacent to the Downs SAC and SSSI and the slope immediately above is classified as broadleaved woodland. A fence separates the two.
17. The "Tree Survey Plan Proposed" Ref WIT-19-28-025-SUP (the tree plan) shows the position of some of the trees in the woodland. However, a full assessment of these trees has not been undertaken and it is not clear that the Root Protection Area Assessment has taken full account of the unusual local topography and the likely knock on effects of undermining the woodland edge. In particular, the proposed building footprint on the tree plan appears to omit the rear portion of the proposed lodge as shown on the Plan Ref 026-19.2 Revision 1.31. This would be wider than the lounge area shown on the tree plan, and would contain bedrooms and bathrooms with rooflights. Nor are the depicted sections convincing as they show different arrangements for the roof lights and Section A-A does not identify the position of the site boundary.
18. I cannot confidently conclude that the excavations for the proposed lodge would not harmfully disturb the stability of the ground and the roots of tree 341 and trees beyond the site boundary. Moreover, it seems unlikely that trees could be planted as proposed and flourish in the available space if the extent of excavations were more accurately depicted. Accordingly, whether or not the site is identified on the Natural England priority habitat map, I cannot

confidently conclude that trees in the site and beyond would not be harmed or that mitigation in the form of new tree planting, would be sufficient to overcome this harm. On this basis I find there would be adverse harm to the Downs SAC and the SSSI.

19. I acknowledge that on site tree planting and habitat creation within the site could be secured by condition. However, the tree plan was also used as the basis of the ARC Ecological Appraisal 2020 and similar concerns to those I have identified above apply to the findings of this Appraisal.
20. The fence separating the appeal site from the woodland behind is prominent in views from Mitchell Avenue. The lodge would be between the fence and The Stables. It would be of contemporary appearance, dug into the slope and chalk spoil would be used to encourage natural pioneer chalk species across the mainly flat roof. The submitted Computer Generated Images suggest that the lodge would be camouflaged from view by vegetation and not prominent due to angles that it would be viewed from.
21. However, these Images are limited in number; I have seen no indication of the positions from which they were generated; and have seen little by way of explanation of the methodology used to produce the images or the extent to which this complies with good practice. I also note that the images may not all include the full extent of the proposals: for example the "Looking from the site looking west as proposed" Image appears to exclude part of the steps by the side of the well. Moreover the terrace would be wider than The Stables, projecting to either side of it and with substantial external steps projecting further to one side. For these reasons I give limited weight to these Images.
22. I acknowledge that over time the proposed planting would help soften the appearance of the lodge to some extent especially as a large portion of the building itself would be below ground. However, in my judgement the overall geometric effect of the flat roof structure and terrace, combined with light spill and activity on the terrace at such a high level, would remain prominent and intrusive in this currently quiet and unobtrusive transition zone.
23. I conclude the proposal would have a harmful effect on the character and appearance of the protected areas referred to above. It would therefore conflict with Policies SP5, DM2, DM11, DM12, DM13 and DM15 of the Island Plan Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document 2012 (the IP) and those principles of the Framework that seek to preserve the character and appearance of the CA and the AONB and to protect important habitats.

Other Matters

24. I have considered whether the concerns set out above could be addressed by conditions. However, given the unusual topography and the sensitivity of the site in relation to landscapes and habitats afforded the highest level of protection by the Framework and legislation, I consider that these are matters that should be resolved before the proposal could be supported.
25. Tourism, an important part of the economy of the Isle of Wight, faces additional challenges from the Covid-19 Pandemic and increasing ferry costs. Policies SP1 SP3 and SP4 of the IP support appropriate employment, indigenous businesses, investment, and an increase in the quality and variety

- of tourist accommodation. The proposed lodge would help meet these objectives.
26. However, the appellant disputes the Council's proposed condition No 4 which seeks to enforce that the lodge would be retained for holiday use, on the grounds that it would be contrary to General Data Protection Regulations. Whether or not this is the case, no alternative means to secure this has been put forward. In the absence of such means I give less than moderate weight to the support offered by Policies SP3 and SP4.
27. I have no doubt that the appellant has invested significantly in the Hotel business. However, I have seen little evidence to indicate that the proposed lodge would be needed to ensure the future economic viability of the Hillside Hotel so I give this little weight.
28. I acknowledge the proposal has been amended in an attempt to overcome the reasons for refusal of a similar, but larger and more prominent, proposal. However, this in itself does not lead me to any different conclusions in respect of the proposal before me.
29. Hillside is in an area where wastewater from development could harm the protected habitats and bird species of the Solent by increasing the input of nitrogen and phosphorus. Policy SP5 of the IP seeks to protect the environment of the Solent and the Isle of Wight Council Position Statement: Nitrogen neutral housing development explains this more fully. This appears not to have been raised by the Council at application stage and is not specifically mentioned on the decision notice. Natural England also consider an Appropriate Assessment in the terms of the Habitat Regulations should be carried out to establish all the effects of impacts arising from construction including a hydrology assessment. Had my conclusions been different I would have sought more information on these matters but, in the circumstances, it is not necessary or appropriate for me to do so.
30. The appellant has expressed dissatisfaction with the way in which the Council handled the planning application. However, this does not go to the heart of the planning matters before me.

Planning Balance and Conclusion

31. The Framework makes it clear that the three over arching objectives of sustainable development should be delivered through the preparation and implementation of plans and the application of the policies in the Framework; they are not criteria against which every decision should be judged. Nevertheless, the proposal would provide employment and would help to support the existing business and the local tourist economy. This is tempered as set out above and I give these matters less than moderate weight in favour of the proposal.
32. The lodge would be constructed in an environmentally sustainable manner and would not harm the setting of the LB. This is to be expected of all developments. The appeal site as a whole amounts to previously developed land. However, the Framework makes it clear that it should not be assumed that the whole of the curtilage should be developed. In this case there are no structures where the proposed lodge would be. I consider these matters are all neutral factors for this appeal.

33. I have concluded that the proposal would have a harmful effect on the AONB, the SSSI and the SAC and would not preserve or enhance the character or appearance of the CA. The Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB and sensitive habitats. I find that the benefits of the proposal are significantly outweighed by the harm that would be caused.
34. In failing to comply with Policies SP5, DM2, DM11, DM12, DM13 and DM15 of the IP the proposal cannot be said to comply with the development plan as a whole. I have found insufficient material considerations to outweigh this conflict. I conclude that the appeal should be dismissed.

S Harley

INSPECTOR