



Appeal Decision

Site visit made on 23 August 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2022

Appeal Ref: APP/B1740/W/22/3295926

Kingfisher Cottage, Salisbury Road, Burgate, Fordingbridge, Hampshire SP6 1LX

- 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 Keith Pritchard against the decision of New Forest District Council.
 - The application Ref 21/11256, dated 28 August 2021, was refused by notice dated 12 January 2022.
 - The development proposed is change of use of an existing leisure building to holiday let, and windows to south elevation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development description above is taken from the decision notice and accurately reflects the proposal. It is a simplified version of the description on the application form, having removed superfluous text and wording that is not a description of development. The applicant was informed and raised no issues.
3. The Council's first reason for refusal includes reference to air quality impacts but they subsequently withdrew this element of the reason for refusal. Consequently, I have not considered air quality.

Main Issue

4. The main issue is the effect of the proposed development on the integrity of European and RAMSAR protected sites, with regard to recreational impacts and phosphate levels.

Reasons

5. The site contains a dwelling and two detached outbuildings. The outbuilding described as a 'games room' is proposed to be used as a 3 bedroom holiday let. The site is near The New Forest Special Protection Area (SPA), New Forest Special Area of Conservation (SAC) and New Forest RAMSAR site. The site is within the catchment of the River Avon, directly adjacent to the River Avon SPA and near to the Avon Valley SAC and Avon Valley RAMSAR site. These are protected European and RAMSAR sites subject to the Conservation of Habitats and Species Regulations 2017 (as amended) (The Habitats Regulations).

6. The protected sites contain a significant range of habitat types and species and associated conservation objectives. The site is also close to Sites of Special Scientific Interest (SSSIs). This proposal is not directly connected with or necessary to the management of a protected site.
7. The proposal would result in additional overnight visitor accommodation and an associated increase in visitors to the area. This is likely to lead to an increase in the number of visitors to those parts of the New Forest which are designated for their nature conservation importance. Use of the visitor accommodation, and hence additional occupants at the appeal site, would also be likely to result in an increase in the amount of wastewater generated and a possible increase in the release of nutrients into the River Avon catchment.
8. Adopting the precautionary principle, the proposal will have a likely significant effect on the important features of protected sites, alone and in combination with other plans and projects. Therefore, in accordance with section 63 of the Habitats Regulations, as the competent authority I am required to undertake an Appropriate Assessment. I have been provided with full details of the qualifying features and conservation objectives of the relevant protected sites, which are summarised below.

Recreational impacts

9. The New Forest protected sites support an extensive and complex mosaic of habitats including wet and dry heaths, ancient pasture woodlands and a network of streams and rivers. These habitats support an exceptional variety of flora and fauna including internationally important populations of breeding and over wintering birds. Pressures and threats include the impact of recreation in the form of disturbance to qualifying species and the erosion and compaction of soils. People staying in the proposed visitor accommodation are likely to visit one or more of the New Forest protected sites. Such visits, including by people with dogs, may lead to disturbance to the habitat of ground nesting birds, overwintering waders and wildfowl, along with additional soil compaction.
10. I cannot rule out the possibility that the proposal would have an adverse effect on the conservation objectives and integrity of the protected sites with regard to recreational impacts. Therefore, I must give regard to any measures that could be delivered which would avoid or mitigate any adverse effects. The New Forest District Council Local Plan 2016-2036 Part 1: Planning strategy (adopted 2020) (LP) was informed by a comprehensive Habitats Regulations Assessment (2018). Policy ENV1 of the LP sets out that for residential development and the provision of overnight visitor accommodation adverse effects can be adequately mitigated by implementing approved measures relevant to the site location, including as set out in Sites Supplementary Planning Documents (SPD) and supplementary guidance on nutrient management.
11. The relevant SPD in this case is Mitigation for Recreational Impacts on New Forest European Sites (2021) which sets out how recreational impacts from visitor accommodation can be acceptably mitigated. This includes via a financial contribution towards the funding of off-site mitigation projects. Natural England has provided written confirmation that they accept this approach and agree that an Appropriate Assessment can conclude there will be no adverse effect on the integrity of the protected sites, where mitigation in line with the SPD is secured.

12. Prior to the determination of the application, the Council informed the appellant of the appropriate mitigatory financial contribution for the proposal, calculated in accordance with the publicly available SPD, and how payment could be made. The appellant has not agreed to make any financial contribution and no alternative approach to mitigation of the recreational impact has been proposed. Therefore, there is no mechanism to secure mitigation of the recreational impact of the proposal on the New Forest protected sites.

Phosphate levels

13. The River Avon and Avon Valley protected sites are important for their fish and invertebrate population, the in-river and bankside habitats and the wet grasslands for wintering wildfowl. The area includes several nationally rare species. Pressures and threats include water pollution, including elevated levels of nutrients. If increased wastewater from occupants of the proposed visitor accommodation were to enter the River Avon catchment it would add to the already raised nutrient levels. In particular, elevated phosphates in the river can lead to eutrophication. The consequent algal blooms decrease light penetration and deplete oxygen in the water, to the detriment of the habitat, leading to a loss of characteristic flora and fauna.
14. Again, I cannot rule out the possibility that the proposal would have an adverse effect on the conservation objectives and integrity of the protected sites with regard to phosphate levels. Therefore, I must give regard to any measures that could be delivered which would avoid or mitigate any adverse effects. The detrimental impact of nutrients, particularly phosphates, on the River Avon has been identified for several years and the existing conservation status is considered to be unfavourable. Since March 2020, Natural England has advised the Council that all new residential development, including overnight visitor accommodation, in the catchment needs to be 'phosphate neutral'.
15. The existing house at the appeal site is served by a sewage treatment plant for which overview specifications and installation details from 2011 have been provided. The appellant proposes to use the existing sewage treatment plant for the visitor accommodation. Such equipment may well be accredited with a certificate of water purification and would significantly reduce nutrients in discharged water. However, I have no evidence to suggest that it would entirely eliminate nutrients to a point where phosphate neutrality would be achieved. Solid residue also needs to be emptied periodically. While waste from the sewage treatment plant may be removed by an approved contractor, there is no guarantee that it would not be deposited elsewhere within the River Avon catchment.
16. The appellant was informed of the current phosphate neutrality requirements prior to the determination of the application. I have been presented with no substantive evidence that would lead me to conclude that the sewage treatment plant, as currently installed and maintained, would achieve phosphate neutrality for the proposed visitor accommodation. The Council are working with Natural England and others to identify suitable mitigation in terms of offsetting measures to enable development to achieve phosphate neutrality. However, this work is ongoing, and a deliverable mitigation solution is not yet in place. Consequently, there is currently no mechanism to ensure that the proposed visitor accommodation would be able to achieve phosphate neutrality, or that adequate mitigation could be secured.

Summary

17. The proposal would have a likely significant effect on European and RAMSAR protected sites and no mitigation has been secured for either the recreational impacts or the phosphate levels. I am therefore unable to rule out the possibility that the proposal, either alone or in combination with other development, would have an adverse effect on the integrity of the protected sites. No alternative solution, overriding public interest, or compensatory measures have been put forward. Consequently, having regard to the Habitats Regulations, permission must not be granted.
18. As such, the proposal would not comply with Policies ENV1 and STR1 of the LP, which together, amongst other things, seek to ensure that the impact of development is avoided or mitigated so that there will not be adverse effects on the integrity of International Nature Conservation sites. The proposal would also be contrary to the National Planning Policy Framework, which indicates that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for.

Other Matters

19. The benefits of the proposal to the appellant and the utilisation of an under used building are noted, as is the support from the Town Council. I am aware of the detailed history of the site and that the appellant is unhappy with the way that the Council determined the application. I also acknowledge the actions of the appellant in ending the fishing club contract and their support for wildlife and the environment. I appreciate that the sewage from the site does not feed directly into mains sewage and that major companies have discharged sewage into water systems. However, these matters do not outweigh the potential adverse effect on protected sites that I have identified.

Conclusion

20. For the reasons given above and taking into account the Habitats Regulations, the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

Helen Davies

INSPECTOR