



Appeal Decision

Site visit made on 13 August 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/B1740/W/22/3297282

**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 grant of planning permission subject to conditions.
- The appeal is made by Mr Keith Robert Pritchard against the decision of New Forest District Council.
- The application Ref 22//10068, dated 17 January 2022, was approved on 1 March 2022 and planning permission was granted subject to conditions.
- The development permitted is described as: "use of existing leisure building as annex to main dwelling; windows to south elevation".
- The condition in dispute is No 3 which states that: *The building the subject of this permission shall only be used as ancillary accommodation related to residential occupation of the existing dwelling on site (Kingfisher Cottage) and not as a separate self-contained unit of habitable accommodation, holiday or short term let or similar such commercial residential unit.*
- The reason given for the condition is: *To protect the character and appearance of the countryside, residential amenity and avoid harm to protected New Forest and River Avon habitats, and to ensure compliance with Policies STR, ENV1 & ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy and Policy DM20 of the Local Plan for the New Forest District outside of the National Park. (Part 2: Sites and Development Management).*

Decision

1. The appeal is dismissed.

Preliminary Matters

2. According to the appeal form, the reason for the appeal relates to a refused planning permission. However, the content of the appellant's statement, clearly relates to a condition of a previous planning consent¹ (the original planning permission), which he objects to. There are also proposals for its removal and amendment. Accordingly, the appeal is made directly against a condition imposed on a planning permission, and is assessed on this basis.
3. I have had regard to a recently dismissed² appeal at the site for the change of use of an existing leisure building to holiday let ('the previous appeal'). The parties have had an opportunity to comment on that decision.
4. Following the determination of the application, Natural England (NE) has issued updated advice in relation to nutrient level pollution in the River Avon catchment. The main parties have had the chance to comment on that advice.

¹ Local Planning Authority Ref: 22//10068, granted 1st March 2022

² Appeal Decision Ref: APP/B1720/W/22/3295926

5. To inform my assessment of the main issue the Council has provided details of relevant habitat designations along with other relevant documents including a mitigation strategy and supporting evidence base for the avoidance of impacts on those designations. I have also sought comments from the appellant and NE on those matters.

Background and Main Issue

6. The original planning permission is for the use of an existing leisure building as an annex to the main dwelling at the site. The approved plans show the creation of additional living accommodation encompassing a lounge, dining room, kitchen, bathroom and bedroom. This level of accommodation could therefore be used independently without any reliance upon the main dwelling.
7. To ensure that the building remains as an ancillary part of the main dwelling the Council imposed a condition (condition No 3) preventing its separation from it and use as a separate unit of habitable accommodation, holiday or short term let. Amongst other things, this condition was considered necessary, to prevent harm to protected habitats of the New Forest and River Avon, that could arise through the intensification of use associated with a separate form of accommodation.
8. The appellant disputes the terms of the condition, while also giving assurances that the annex will be used solely by the existing occupants of the main dwelling as additional living accommodation and for no other purpose with no increase to the persons living on or visiting the site. Despite those guarantees, planning permission runs with the land and conditions have the effect, amongst other things, of preventing future harm associated with the use and occupation of land and buildings.
9. With that background, the main issue is the effect that removing condition 3 would have on the integrity of the New Forest and River Avon Special Areas of Conservation (SAC) and Special Protection Areas (SPA) with regard to recreation impacts and phosphate levels.

Reasons

The Site

10. The appeal site, as shown on the submitted drawing³, encompasses a detached dwelling, outbuilding and single detached garage. The outbuilding is the subject building referred to in Condition No 3. For the purposes of this appeal, it is referred to as 'the leisure building'.
11. The submitted documents outline a somewhat intricate history. The dwelling was originally subdivided into 4 cottages, then two dwellings and following the appellant's purchase of the property in 2010 to a single dwelling. This is reflected in the property being valued as a single dwelling for Council tax purposes.
12. However, given the dwelling's large scale, layout and separate staircase, part of it has been used, on occasions, as accommodation for visiting family, friends and trades people working at the property. There is no detailed evidence to indicate that this arrangement is a separate use or has planning consent to

³ OS Sitemap, Scale 1:2500

operate independently of the main dwelling at Kingfisher Cottage. Notwithstanding this, I have assessed this appeal as it relates to the leisure building referred to in Condition 3, rather than the whole property.

13. The appellant proposes that Condition No 3 is either removed or re-worded so that, "the condition allows for the continued holiday let use of the portion of the dwelling shown under Land Registry Title HP 484279".

Protected Sites

14. As indicated in the previous appeal decision, the site is near The New Forest Special Protection Area (SPA), New Forest Special Area of Conservation (SAC) and New Forest RAMSAR site. Additionally, 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).

Recreation impacts

15. The New Forest protected sites support an extensive and complex mosaic of habitats including wet and dry heath, ancient pasture woodland and a network of streams and rivers. These support important populations of breeding nightjar, woodlark and Dartford warbler. New residential development in the locality would likely result in more recreational visits to the New Forest with consequential effects through disturbance from increased human and/or dog activity upon those special features. The impacts of recreational disturbance can be such that they affect the breeding success of the designated bird species and therefore act against the stated conservation objectives of the designated sites.
16. By removing the condition there would be nothing preventing the leisure building being used as a separate residential unit or holiday let given the facilities within it. A residential use or holiday let, separate from Kingfisher Cottage, would likely result in a more permanent and sustained occupation of the building compared to the occasional or intermittent use it may have as ancillary guest accommodation to the host property.
17. There is a reasonable likelihood that the New Forest protected sites would be accessed for recreational purposes by future occupiers of the development. Although small, this may lead to the harmful disturbance of the habitat of birds and is likely to have a significant adverse effect on the integrity of the SAC/SPA, when considered in combination with other residential development in the surrounding area.
18. Policy ENV1 of the Local Plan⁴ states that for residential development and the provision of overnight visitor accommodation adverse effects can be adequately mitigated by implementing approved measures. These include, through financial contributions, the funding of off-site mitigation projects, detailed in the Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document (2021) (MRI-SPD). NE confirm they are supportive of this approach to overcoming harmful effects on the protected sites in the New Forest and agree that an appropriate assessment can conclude

⁴ The New Forest District Council Local Plan 2016-2036 Part 1: Planning strategy (adopted 2020) (Local Plan)

there will be no adverse effect on their integrity, where mitigation in line with the MRI-SPD is secured.

19. The appellant, having previously been advised by the Council, is aware of the appropriate mitigatory financial contributions required in accordance with the MRI-SPD's and how these are secured. However, these have not been provided and I am not satisfied that appropriate mitigation, through an appropriate mechanism, has secured the requirements of the MRI-SPD. Moreover, there is insufficient information with the appeal to demonstrate that conditions are an appropriate mechanism of securing a scheme for mitigation, and that they would meet the requisite tests in Planning Practice Guidance.
20. Accordingly, the evidence before me indicates that the removal of condition No 3 would enable a separate unit of habitable accommodation to operate at the site. Consequently, there is potential for recreational disturbance to the New Forest protected sites through additional activity associated with that use, which has the potential to affect the integrity of these designated sites.

Phosphate levels

21. The River Avon's protected status is owed to it being one of the most diverse chalk streams in the UK, with over 180 species of plants, one of the most diverse fish faunas, and a wide range of aquatic invertebrates. In March 2022, Natural England informed the Council and other relevant local planning authorities about unfavourably high levels of phosphates recorded in the SAC. Residential development can contribute to this issue through the discharge of waste water, and I must therefore consider this matter in relation to the appeal proposal.
22. Therefore, an appropriate assessment must be undertaken so as to ensure there is no reasonable scientific doubt as to the effects of the proposal, in combination with other development. Natural England advise a precautionary approach whereby new residential development, including overnight visitor accommodation, within the catchment should achieve phosphate neutrality. If they do not, then additional nutrient loads could enter the water environment causing significant adverse effects on the SAC and its features of interest.
23. Removing condition 3 would result in the provision of a further dwelling or holiday let at the appeal site. A permanent, separate residential use would likely increase waste-water discharges from the building into the River Avon River catchment. Similarly, a permanent holiday-let with a regular turnover of guests, would result in greater and more frequent discharges.
24. The leisure building would be connected to the same sewage treatment plant serving the existing house. I do not have the full details or specification of that unit, however, it is indicated that the treated water is purified and allowed to enter into rivers and other watercourses. I am also told that waste water is treated to a drinkable standard. The left-over sludge is collected from the unit and later used as fertilizer.
25. The high level in which the waste water is sanitized would likely reduce nutrient content. Yet, I share the misgivings of my colleague that presided over the previous appeal, as there is no information confirming that the unit would eliminate nutrients to a level where phosphate neutrality would be achieved. Likewise, there is no guarantee that the waste sludge would not be spread as

fertilizer on land within the River Avon catchment, with consequential run-off effects.

26. On this basis, there is no substantive evidence that would lead me to conclude that the sewage treatment plant, as currently installed and maintained, would achieve phosphate neutrality for a separate dwelling / holiday-let at the site.
27. Furthermore, no suitable mitigation has been identified in terms of offsetting measures to enable the development to achieve phosphate neutrality. Consequently, there is currently no mechanism to ensure that a separate residential / holiday let unit would be able to achieve phosphate neutrality, or that adequate mitigation could be secured.

Findings

28. The proposal would have a likely significant effect on protected sites of the New Forest and River Avon and no mitigation has been secured for either the recreational impacts or the phosphate levels. Accordingly, I cannot 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. Therefore, having regard to the Habitats Regulations, permission must not be granted.
29. On this basis, the proposal would not comply with Policies ENV1 and STR1 of the Local Plan and the MRI-SPD, which 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 Paragraph 180 of 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

30. As an alternative to the condition's removal, the appellant suggests amending its wording to allow the continued holiday let use within part of the dwelling, albeit covered by a separate land registry title⁵. However, that activity would need to be looked at through a different lens, as I am not certain, based on the information submitted whether it relates to a separate holiday let use from the main dwelling, or, as indicated in the evidence, ancillary accommodation, for use by friends, family and occasional trades people.
31. As the appellant has confirmed that the property is registered as a single entity for Council tax purposes and the visitor's accommodation within the dwelling has an incidental character, I cannot be certain that re-wording the condition in the form proposed would not introduce a new separate planning unit, with consequential effects on the protected sites. Moreover, the development relating to the appeal and the condition in dispute relates to the leisure building's use.

⁵ Land Registry Title HP 484279

Conclusion

32. 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.

RE Jones

INSPECTOR