



Appeal Decision

Site visit made on 2 June 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2023

Appeal Ref: APP/L1765/W/22/3296275

Land opposite Shady Oaks, Durley Brook Road, Durley SO32 2AR

- 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 James Barney against the decision of Winchester City Council.
 - The application Ref 21/00658/FUL, dated 9 March 2021, was refused by an undated notice.
 - The development proposed is the construction of two buildings to form three holiday lets.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The decision notice submitted was not dated, however the main parties both agree that it was issued on the 25 October 2021. It is also noted that the scheme is considered a resubmission of an early application, reference 20/00824/FUL.
3. Prior to submission of the planning application, it is understood that trees were felled on the appeal site, some ground works had taken place, and a gated access from Durley Brook Road was constructed. This broadly accords with the topographic survey (reference 8506/01) dated June 2020.

Main Issues

4. The main issues are, therefore, the effect of the proposed development on the character and appearance of the area, the Solent Special Protection Area (SPA), and the appeal site as a priority habitat.

Reasons

Character and appearance

5. Durley Brook Road is a rural road with a verdant character created by the mature hedging studded with trees along much of its length. The main bulk of built form is on the south side of the road, west of the primary school and constitutes a row of mainly detached bungalows set back behind low level walls and hedging. To the north of Durley Brook Road and east of the school development becomes more sporadic with occasional farms or residential dwellings set within a patchwork of rolling, tree lined fields. The appeal site forms part of this character. It is edged on either side with mature trees and the central area appears to be covered in scrub. The site surrounded by fields and contributes positively to the verdant character of Durley Brook Road.

6. The proposal would introduce 3 residential units to be used as holiday lets, with an access drive which would extend almost the full length of the site, 3 separate parking areas, and areas of grassed open space for use by future occupants. This would require the clearing of much of the site. Due to the nature of the proposed use, there is also a high potential that there would be a quantity of domestic paraphernalia introduced. Therefore, the proposal which would permanently alter the appearance of the site. The character of the site would also be significantly and permanently altered by the proposal which could provide residential accommodation for up to 12 people with associated vehicle parking.
7. It is appreciated the existing tree lined side boundaries would be retained. However, during my site visit it was evident that the trees did not extend to the front and rear of the site. This meant there were clear views through the site from both Durley Brook Road and the public footpath in the field behind. From the information before me it is not evident that the front and rear boundaries of the appeal site would be landscaped in such a manner as to provide screening from these vantage points.
8. Due to the lack of development around the appeal site the proposal would stand out within views from both the road and public footpath as an out of character feature within the patchwork of fields. The domestication of the site would reduce its overall verdant nature, and the significant intensification of use, and likely introduction of domestic paraphernalia would permanently alter its character and appearance, to the detriment of the surrounding area.
9. It is appreciated that the design of the proposed buildings would be of a style appropriate to a rural setting and additional landscaping could go some way to screen the proposed development. Nevertheless, these factors do not mitigate against the harm caused by the incongruity and significant intensification of the proposed use.
10. Accordingly, the proposal would significantly harm the character and appearance of the area. It would fail to comply with Policies DM16 and DM23 of the Winchester District Local Plan Part 2 (LPP2) as far as they require new development to respond positively to the character and appearance of surroundings.
11. The Council have also referred to LPP2 Policy DM24, which seeks to prevent the loss and deterioration of special trees, important hedgerows, and ancient woodlands, as defined within the supporting text of that policy. However, there is nothing before me which confirms any features in the appeal site would fall into these categories.

SPA and priority habitat

12. The appeal site falls within the catchment area for the SPA. It is an area which, as designated by Natural England, needs action to be taken concerning nutrient neutrality along with mitigation against any additional recreational pressures. The proposal would introduce 3 additional holiday units and thereby increase the pressure both in terms of foul water treatment, which is directly related to increases in nitrates, and recreational use of the SPA. Given the vulnerability of the SPA it cannot be concluded that the development would not adversely affect the integrity of the proposed site.

13. There is no scheme of mitigation before me to consider and although the Council state a financial obligation may be appropriate, no mechanism to secure such an obligation has been submitted. The suggested condition wording by the appellant is acknowledged. However, in this case, without specific details of the mitigation measures proposed nor how those measures would be actioned, there is insufficient certainty or clarity in detail to ensure the reasonable use of a condition, negatively worded or otherwise.
14. Notwithstanding trees having recently been replanted on the appeal site, the previous clearing had permanently altered the priority habitat created on the site. It is, nevertheless, acknowledged that the Council's ecologist agrees with the appellant's ecological report and confirms that the on- and off-site measures proposed would be acceptable mitigation for this loss.
15. However, the land proposed for the off-site measures is not clearly identified nor does it appear to be within the ownership of the appellant. Therefore, as with the SPA mitigation, there is not enough detail to provide certainty of delivery to rely on a condition for the off-site measures. Although it is noted a condition could secure the on-site measures proposed.
16. Consequently, without any method of securing the mitigation against the harm to the SPA and the loss of a priority habitat, the proposal would cause significant harm to both. It would fail to comply with Policies CP15 and CP16 of the Winchester Local Plan Part 1 (LPP1) and the National Planning Policy Framework (the Framework), insofar as they require new development to maintain, protect and enhance the integrity of protected sites and habitats.

Other Matters

17. The appellant states the proposal would comply with LPP1 Policy MTRA4 which guides development in the countryside. This policy specially supports the reuse of existing rural buildings for tourist accommodation, it does not refer to new build units. They also refer to various other development plan policies and Framework paragraphs relating to the effective use of land. However, these should not be read in isolation and do not mitigate the harm identified in the main issues. Nor has it been shown how the potential economic benefits to the wider area would outweigh that harm.
18. It is also acknowledged that through other legislation the Forestry Commission has served a restocking notice (reference RN28/22-23) on 6 February 2023 for the replanting of trees on the appeal site. The appellant has submitted a plan showing where these trees have since been planted.

Conclusion

19. For the reasons given above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, that would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR