



Appeal Decisions

Site visit made on 20 June 2023

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 6th July 2023

Appeal A Ref: APP/B1740/C/23/3318662

Appeal B Ref: APP/B1740/C/23/3318663

Land to the south of Oakbridge House, Lymore Valley, Milford on Sea, Hampshire, SO41 0TW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal are made by Mr Tom Chamberlain (Appeal A) and Mrs Juliette Chamberlain (Appeal B) against an enforcement notice issued by New Forest District Council.
- The notice, numbered EN/21/0381, was issued on 27 January 2023.
- The breach of planning control as alleged in the notice is: a) Without planning permission, the material change of use of agricultural land to use for the stationing of a shepherds hut for the purpose of holiday accommodation; b) Without planning permission, engineering operations to create a new vehicular access off Lymore Valley, within the approximate area marked with an X on the attached site plan; c) Without planning permission, carrying out of an engineering operation in order to recontour site levels to create earth bunds and an area for parking motor vehicles; d) Without planning permission, creation of paths and hardstandings; and e) Without planning permission, operational development to erect fencing, exceeding 1 metre high adjacent to a highway between points Y and Y on the attached plan.
- The requirements of the notice are to: i) Cease using the land for siting of a shepherd hut for the purposes of holiday accommodation; ii) Remove the shepherd hut; and all domestic items associated with the holiday letting use of the site, including hot tub; table, chairs and ornamental planting, from the land; iii) Clear from the land all items not reasonably required for the maintenance and upkeep of the agriculture land; iv) Following compliance with steps i)-iii) remove from the land all hard surfacing including block paving and timber edging; iv) Following compliance with step iv) above, level the earth bunds; and v) Either remove fencing or reduce the fencing to no higher than 1 metre in height between points annotated Y - Y on the attached site plan.
- The period for compliance with the requirements is 2 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on ground (g) only.

Decisions

1. The appeals succeed on ground (g) only. It is directed that the enforcement notice is corrected by the deletion of section 3(a) and its replacement by the following: "a) Without planning permission, the material change of use of the Land to use for the stationing of a shepherds hut for the purpose of holiday accommodation"; and varied by the deletion in section 5(iii) of the word "agriculture", and by the substitution of 7 months as the period for compliance.

2. Subject to the correction and variations, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and preliminary matters

3. The appeals concern a small plot of land on the eastern side of Lymore Valley, a quiet narrow rural road. The property on the opposite side of the road is Oakbridge House. The appeal land and Oakbridge House are in the same ownership and Land Registry title. It is accepted by the appellants that the appeal site is not within the residential curtilage of Oakbridge House, but it is claimed that over many years the appeal site has been used for purposes ancillary to the use of Oakbridge House as a dwellinghouse, and some evidence has been provided in support of that assertion. However, I agree with the Council that the site is now a separate planning unit. The use of the site for stationing a shepherd's hut for the purposes of letting for holiday accommodation, notwithstanding that it is also used for visiting friends and relatives, is not one that would ordinarily be ancillary or incidental to the use of Oakbridge House as a dwellinghouse, and save for some utilities that remain connected to Oakbridge House, it is entirely separate functionally and physically.
4. The past use of the land, which is a matter of dispute between the parties, has relevance for the purposes for which it can be used in the future, but in this case it is not an issue that I need resolve for the purposes of this appeal. Where an enforcement notice alleges a material change of use of land it is not necessary to recite the previous use. I shall amend the notice so as to remove reference to 'agricultural land' in the description of the breach of planning control, and to 'agriculture' in the requirements. I consider that these amendments cause no injustice.

Appeal A - ground (a) and the deemed planning application

5. This ground is that planning permission should be granted for the material change of use alleged and for the operational developments. The site is in the South-West Hampshire Green Belt. Material changes of use which do not preserve openness or which conflict with the purposes of including land in the Green Belt are considered, by national and local policies, to be inappropriate development which should not be permitted except in very special circumstances. The first question that arises is whether the development is inappropriate development. Looking at the development in the round, the stationing of the hut, notwithstanding that it is a mobile structure, reduces openness, as does the fencing, bunds and hard surfaces put in place to facilitate it, along with residential or domestic paraphernalia such as the hot tub and outdoor seating. The uncertainty about the previous lawful use makes it difficult to determine whether the development conflicts with the purposes of including land in the Green Belt, but the loss of openness in itself is sufficient to establish that the development amounts to inappropriate development in the Green Belt.
6. Notwithstanding that there is dispersed residential development along Lymore Valley, I consider also that the creation of the new vehicular access and associated hardstanding, and the erection of the fencing along the roadside, are likely to have adversely affected the tranquil and verdant character and appearance of the area, as would the use, adding to activity along this quiet

rural lane. Views into the site are currently largely screened by vegetation and the fencing, but in the winter months in particular the shepherds hut and general activity associated with the use, including artificial lighting, are likely to be noticeable and quite different in character even from the low level garden usage that has been claimed, again to the detriment of local character. I acknowledge that the appellants are willing to improve landscaping, including by removal of the fence, but without a proposed scheme I could not be confident that the development could be satisfactorily integrated into its surroundings in a manner sufficient to preserve local character. It is therefore contrary to Policy ENV3 of the New Forest District Local Plan 2016-2036 Part 1: Planning Strategy (LP1).

7. So far as the location is concerned, the development plan seeks to meet most development needs within settlement boundaries (LP1 Policy STR 1). Residential development within the countryside is only considered acceptable in specified circumstances, none of which apply to this proposal [LP Policy DM20 of the New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management (LP2)], while the limited circumstances in which tourism and visitor facilities may be considered acceptable outside of the built-up areas also do not apply [LP2 Policy DM13 and saved Policy CS19 of the New Forest District (outside the National Park) Core Strategy (CS)]. The proposal therefore conflicts with key aspects of the sustainable development strategy for the District.
8. Much of the site, the notable exception being the parking space, is classified by the Council's Strategic Flood Risk Assessment as Flood Zone 3b, being at risk of fluvial or pluvial flooding, although the Environmental Agency Flood Risk map indicates that it is Flood Zone 1 for river and sea flooding. A site-specific flood risk assessment (FRA) prepared for the appellants indicates that the risk of surface water flooding for the whole site ranges from very low to high, with parts of the site, which abuts a stream, at high risk of flooding, potentially up to 0.6m. The FRA also suggests that there is the potential for flood water to be displaced by development on the site, which could increase flood risk elsewhere. However, the shepherds hut and hot tub are sited in the southern and western parts of the site where flood risk from all sources is the lowest, and ground levels on the site could be graded and infiltration capacity enhanced so as to counter the potential for off-site effects. The FRA contains recommendations aimed at making the development safe for its lifetime, and these could be secured by condition. As such I consider that the development does not conflict with LP1 Policy CCC1, which aims to ensure that development does not result in hazards which prejudice the health and safety of communities and their environments.
9. Also among the reasons for issuing the notice is the potential impact on the living conditions of neighbours through noise and disturbance. In view of the relatively close proximity of the hut itself and the associated outdoor facilities to the neighbouring property to the south in particular, there is potential for the use to cause disturbance, and it appears that some complaints have been made to the Council regarding lighting, noise and smoke problems. However, as it stands the accommodation is only suitable for 2 people, itself limiting the potential for disturbance, and matters such as external lighting could be controlled by the use of planning condition. Overall, while I acknowledge that there is potential for disturbance that might adversely affect the living conditions of neighbours, I am not persuaded that there is sufficient evidence

to sustain a finding of conflict with LP1 Policy ENV3 insofar as it seeks to avoid unacceptable effects on residential amenity.

10. Overall however, in view of the inappropriate nature of the development in the Green Belt, national and local policy requires that the harm to the Green Belt and any other harm must be clearly outweighed by other considerations before planning permission can be granted. Substantial weight must be given to any Green Belt harm, the definitional harm due to inappropriateness and the adverse effect on Green Belt openness. Further harm arises from the effect on local character and conflict with the development plan's sustainable development strategy. I give both of the matters considerable weight.
11. The other considerations put forward in favour of the development are the contribution the development makes to the local rural and tourism economy, and a claimed fallback position of the hut being re-sited within the residential curtilage within a more prominent and harmful position. Clearly the use provides some benefit to the local economy, as a small scale tourist facility, and I give this significant weight. So far as the claimed fallback goes however, I do not agree that the hut, if sited within the curtilage of the dwelling at Oakbridge House, could necessarily be used as it is now without planning permission, that would be a matter of fact and degree. Furthermore I cannot envisage where within the curtilage, and it has not been specified, the hut might be sited where it would cause anything like the harm to local character as its current siting. Accordingly I give the fallback position little weight. The combined weight of these other considerations fall well short of clearly outweighing the harm identified, and it follows that the very special circumstances necessary to justify a grant of planning permission do not exist. As such the proposal also conflicts with LP1 Policy ENV2, which provides that development proposals in the Green Belt will be determined in accordance with national planning policy. The appeal on ground (a) cannot therefore succeed, and the deemed application for planning permission for the material change of use must be refused.
12. The notice also concerns the operational development undertaken in support of the change of use, namely the engineering operations to create a new vehicular access, earth bunds and an area for parking, the creation of paths and hardstandings, and the erection of fencing. These works could have been required to be removed without reference to them in the allegation, but as framed the notice attacks them separately, hence they form part of the deemed planning application. The engineering works do not preserve Green Belt openness and hence fall to be considered as inappropriate development, as do the other works, none of which are considered under national Green Belt policy to be exceptions to the presumption against new buildings. There is also harm to local character due to the fencing, bunds and hard-standing, while, as noted above, the appellant's FRA suggests that the works that have taken place may potentially displace flood water, which could increase flood risk elsewhere. In the absence of the use, no separate justification for these other works has been put forward, nor are there any other considerations put forward that might outweigh the Green Belt and other harm so as to justify a grant of planning permission for the various works enforced against.
13. In coming to this view I am aware that there is an element of underenforcement in the notice requirements. The works to create a new access are not referred to in the requirements, hence planning permission is

not required for the retention of the access itself once the notice is complied with, and similarly the fencing can be retained at 1m high, reflecting permitted development rights.

Other matters

14. Among the Council's reasons for issuing the notice is the potential for the use of the site as overnight visitor accommodation to adversely affect protected sites of importance for nature conservation. The appellant has provided an undertaking made in accordance with section 106 of the 1990 Act which contains measures to avoid adverse effects on the integrity of the sites, while nutrient neutrality can be secured be condition. Measures would also be taken to avoid air quality impacts. However, in view of my conclusion above that planning permission should not be granted, this is not a matter I need consider further.

Conclusion

15. The matters enforced against, the material change of use and the operational development, are inappropriate development in the Green Belt and conflict with national policy and with the development plan read as a whole. In the absence of other considerations sufficient to outweigh the development plan conflict, the appeal on this ground must be dismissed and planning permission refused.

Appeals A and B - ground (g)

16. This ground is that the time for compliance, 2 months, is too short. It is argued that it would be reasonable to allow a period of 7 months to enable current bookings to be honoured and for the physical works of restoration. While I can understand the Council's viewpoint that the appellant's have continued taking bookings at their own risk, appellants are entitled to act as though their appeal may be successful. In view of the potential disruption to prospective users, I consider the 7 months sought to be reasonable in the circumstances, and the appeals succeed to that extent.

Paul Dignan

INSPECTOR