



Appeal Decision

Site visit made on 27 June 2023

by Jonathon Parsons MSc BSc DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2023

Appeal Ref: APP/B1740/W/22/3301006

Unit 1, 1 Bridge Street, Fordingbridge SP6 1AH

- 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 A Gulabakh (Hants Developments Ltd) against the decision of New Forest District Council.
 - The application Ref 21/10658, dated 29 April 2022, was refused by notice dated 24 February 2022.
 - The development is the use of first & second floor as 3 flats; retain existing A1/A2 use on ground floor; remodelling of rear ground floor to create residential unit 4; extension to form staircase to first floor; bin & cycle store.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Main parties and Natural England (NE) have commented on the use of a 'Grampian' style condition to secure nutrient neutrality mitigation in relation to nature conservation sites. Similarly, the appellant has been asked for comments on the use of a Unilateral Undertaking (UU)/ section 106 to secure this mitigation, along with that for recreational pressure, in respect of these sites. Comments on these matters have been considered in this decision.
3. The development was complete at the time of my site visit and the scheme has been assessed on this basis. To address heritage asset issues, the appellant's comments on a Council suggested condition, to reinstate the original windows of the former appeal building, have also been considered in this decision.

Main Issues

4. The main issues are the effects of the scheme on:-
 - the integrity of designated nature conservation sites, the River Avon Special Area of Conservation (RASAC), the Avon Valley Special Protection Area (AVSPA), the New Forest Special Protection Area (NPSA), the New Forest Area of Conservation (NFSAC);
 - heritage assets, namely a non-designated heritage asset (NDHA), a former bank building known as 1 Bridge Street, Fordingbridge Conservation Area, and Grade II listed buildings, known as 15-21 High Street, 5-7 High Street, 3-5 High Street, 2 and 4 High Street, and 5 and 7 Salisbury Street, having regard to their settings;.

- the living conditions of the occupiers of the proposed flat 3, having regard to daylight and sunlight; and
- flood risk to the occupiers of the scheme's residential unit 4.

Reasons

Special Areas of Conservation and Special Protection Areas

5. The River Avon enters the New Forest District south of Downton (Wiltshire) and heads southwards to Fordingbridge and Ringwood, before exiting the coast at Christchurch Harbour. The River Avon designated sites, RASAC and AVSPA, have internationally important interest features, chalk river habitat, Desmoulin's whorl snail, various fish species, and wintering wildfowl. Foul water would be treated but it would still have nutrients entering the catchment of the River Avon. The New Forest designated sites, NFSPA and NFSAC, cover expansive areas and have internationally important interest features deriving from the heathland, water and meadow features habitats and species, including various breeding and wintering raptors, ground nest species comprising Nightjar, Woodlark and Dartford Warbler, and Wood Warbler.
6. The National Site Network objectives require maintaining or where appropriate the restoration of species and habitats listed in Annex 1 and II of the Conservation of Species and Habitats Regulations 2017 to a Favourable Conservation Status.

Nutrients

7. The residential development generates foul water discharge, including nutrient enrichment, into the river environment. Rising phosphorous levels have led to a deterioration in the water quality of the River Avon. Poor water quality can lead to eutrophication, enrichment of plant nutrients in water, which increases plant growth resulting in oxygen depletion. Algal blooms resulting from eutrophication, increase turbidity, and decrease light penetration. The decomposition of organic wastes that often accompanies eutrophication deoxygenates water further, augmenting the oxygen depleting effects of eutrophication. In a freshwater environment, phosphorus is usually a principal cause of eutrophication.
8. NE and the Environment Agency (EA) advise that existing measures, as set out in the Hampshire Avon Nutrient Management Plan, to off-set the amount of phosphorous entering the River Avon, are not sufficient. They do not ensure no significant adverse effect on the internationally important features of the RASAC and AVSPA, either alone, or in combination with, other plans and projects.
9. The Council has developed a nutrient off-setting scheme, involving the closure of the Bickton Fish Farm at Fordingbridge. The fish farm was a recognised source of phosphate pollution into the river and water quality monitoring has enabled its effect to be quantified. The Council and the owners of the fish farm have entered into an agreement which sets up a system of buying mitigation credits through the closure of the farm and consequent removal of the phosphate discharge into the river. The Council has devised a detailed phosphate calculator, developed by Natural England, which gives a nutrient credit balance required to be offset. Developers then approach the scheme's

operator, purchase the credits and use the purchase receipt to discharge their nutrient credit balance.

10. Planning Practice Guidance (PPG)¹ advises that 'Grampian' conditions should not be used where there are 'no prospects at all' of the action being performed within the time-limit imposed by the condition. To secure nutrient neutrality mitigation, the Council has been using a 'Grampian' style condition requiring the implementation of the off-setting scheme detailed in its strategy above. NE² has raised no objections to such a condition providing it is appropriately worded. However, the appellant has not undertaken the detailed phosphate calculation and there is no completed relevant notice of credit purchase. Without this, there is no certainty as to whether an off-setting mitigation scheme can be secured to justify imposition of a condition. No alternative UU or s106 has been submitted to address this nutrient neutrality issue either.

Recreation pressure and nitrogen deposition

11. Residents would be able to make use of the New Forest Special Protection Area (NPSPA), the New Forest Area of Conservation (NFSAC) for recreation, such as walking, including with dogs, given their proximity. Mostly, residents would travel by vehicle. Recreational pressures could result in disturbance to birds, especially ground nesting species. Other adverse effects could include trampling and increased risk of wildfires. The use of vehicles could result in nitrogen deposition within the SPA and SAC.
12. The Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document (May 2021) details mitigation measures; publicly accessible alternative natural recreational greenspace; enhancement of existing greenspace and footpaths/rights of way in all settlements; access and visitor management, including the provision of rangers; and the monitoring of the conditions of habitats and species, visitor patterns and progress in implementing the mitigation strategy. For nitrogen deposition, monitoring would take place along roads and remedial measures undertaken, where prevalent.
13. These mitigation measures result in alternative recreational opportunities to deflect potential visits away from the designated sites, whilst ensuring they do not have the potential to lead to adverse impacts on other sites. The measures would also manage and educate visitors to change visitor behaviour including when visiting designated sites. Mitigation measures would be monitored, and effectiveness evaluated, to provide a better understanding of the recreational impacts, refine policies and measures. Based on costings and residential occupancy rates, the SPD sets out financial contributions for these measures.
14. In respect of the NFSPA and NFSAC, a UU template has been provided which would address the recreational pressures and nitrogen deposition, which the appellant has not completed and submitted. If the appeal was allowed, the Council has suggested a 'Grampian' style condition to secure the mitigation. However, the effect of the condition is that another agreement, the payment of financial contributions for off-site mitigation, is required, and there has been no heads of terms or principal terms agreed. PPG³ advises that a negatively

¹ Planning Practice Guidance paragraph 21a-009-20140306.

² Natural England response, dated 27 July 2023.

³ Planning Practice Guidance paragraph 21a-010-20190723.

worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence, may be appropriate. However, it advises of exceptional circumstances to be justified and this has not been proven.

Conclusions on designated nature conservation sites

15. In addressing mitigations for nutrient neutrality, recreational pressure and nitrogen deposition, the appellant has been consulted over whether a UU may be a mechanism to secure the mitigation. Despite the appellant's willingness to resolve the ecological issues, there is no appropriate mechanism to secure the mitigation before me. There are no alternative solutions that have a lesser effect, or avoid an adverse on the integrity of the sites. Development adversely affects the integrity of each site, either alone or in combination with other projects coming forward. Priority habitats and species are adversely affected and there are no imperative reasons of overriding public interest. Therefore, it cannot be ascertained that the scheme does not adversely affect the integrity of the AVSPA, RASAC, NFSPA and NFSAC.

Heritage assets

16. The appeal site comprises a two storey building which lies at a prominent corner of Bridge Street and Salisbury Street. Although not listed, Fordingbridge Conservation Area Appraisal (FCAA)⁴ identifies the building as a key important building within the Conservation Area.
17. The building is faced in red brick with light-coloured limestone applied to parapets, cornice eaves, door and window surrounds, corner quoins and horizontal banding. Behind the parapet, there is a low-slung slate roof and a chimney. Part of the building has chamfered façade at the corner of Bridge Street and Salisbury Street. Window openings are generally of significant depth and width, recessed with limestone surrounds, with smaller windows on part of the elevation facing Salisbury Street. Photographs show the original fenestration to be white coloured timber sash windows.
18. Built in the last century as a bank, the building has an imposing and prestigious presence within the centre of the town. There is an unattractive modern front entrance door, wiring and light attached to the building, and the rear has been much altered. However, the use of high quality and bold facing materials and detailing, including the white painted timber sash window, on the road frontages readily identify the building as a high status use, and reflects the commercial evolution and growth of the town. Such architectural and historical qualities are of value and importance meriting a NDHA status and contribute to its significance.
19. The Conservation Area covers the historical commercial core of Fordingbridge, either side of a central linear route though the High Street and Salisbury Street, and more recent outlying housing areas, the River Avon and water meadows. Bridge Street is a crossing point across the River Avon based on a medieval alignment. Along the High and Salisbury streets, there is a tight-knit grain of historical development, comprising many listed buildings which has a distinctive 18th century character, with mainly 2 storey buildings with attic accommodation.

⁴ Fordingbridge Conservation Area Appraisal (FCAA) 2001.

20. Within the town centre, ground floor shops predominate. They are characterised with traditional timber shopfronts, use of expose/painted brick and render, and timber sash windows/casements above, and within tiled roofs, small pitched roof dormers. Buildings have been altered but the traditional fenestration and shopfronts, high quality external finishes and detailing, together with the age of buildings, stand out and are overriding architectural and historical qualities that contribute to the significance and special interest of the Conservation Area, taken as a whole.
21. There are Grade II listed buildings at 15-21 High Street, 5-7 High Street, 3-5 High Street, 2 and 4 High Street and 5 and 7 Salisbury Street. These historic buildings are two storey, with some having an attic storey above. They have traditional timber shopfronts and entrances, and first floor timber casements/sash windows within rendered/painted or bricked facades. Roofs are tiled with small dormers. The buildings vary in age from the 16th to the 18th century, with some being altered at later dates and they are closely aligned with the roads and one another, with 2 and 4 High Street and 5 and 7 Salisbury Street listed for group value. Their siting, form, traditional shopfronts and fenestration, together with the use of high quality external materials result in an attractive vernacular, which together with their evolution, represent architectural and historic qualities, are of significance and special interest to these listed buildings.
22. These listed buildings vary in terms of their proximity and visibility from the NDHA. Lack of visibility is not the sole means of judging setting but by reason of their tight-knit nature and location, the special interest and significance of the listed buildings at 2 and 4 High Street, and 5 and 7 Salisbury Street are seen within the context of the appeal site. The other listed buildings at 15-21 High Street, 5-7 High Street and 3-5 High Street are seen and understood within adjacent areas of the street within which they are located, away from the NDHA.

Effects of scheme

23. The scheme has resulted in the removal of traditional windows with contemporary uPVC double glazed windows, two paned with a dividing horizontal bar across, and finished in light grey colour. Architecturally, window design is of great importance and value to the NDHA's significance. By reason of the window's modern design, materials and colour, the fenestration is unattractive lacking the higher quality finish, profile and detailed design of the original timber sash windows and jars awkwardly with the older traditional architecture of the building, the surrounding Conservation Area and listed buildings at 2 and 4 High Street, and 5 and 7 Salisbury Street.
24. Such an incongruous change diminishes the design rationale of this prestigious commercial building and its historical identity. The grey colour tones down the boldness of the bank's façade, a feature contributing to its prestigious design. The fenestration of other buildings has changed over the years but these buildings will vary in age, evolution and design, and every scheme has to be considered on its particular planning and historic merits.
25. For all these reasons, the scheme harms the significance of the NDHA. The fenestration design, materials and colour also fails to preserve the character and appearance of the Conservation Area, as a whole, in conflict with s72(1) of the Planning (Listed Buildings and Conservation Areas) Act (the Act) 1990.

Similarly, the fenestration adversely affects the settings of the listed buildings at 2 and 4 High Street, and 5 and 7 Salisbury Street in conflict with s66(1) of the Act.

26. The degree of harm to the significance of each of the designated heritage assets, is, in terms of the National Planning Policy Framework (the Framework), less than substantial. In accordance with paragraph 202 of the Framework, the harm should be weighed against the public benefits of the proposal, including securing the optimum viable use.

Living conditions

27. Flat 3 is a two bedroomed maisonette. On the lower floor, plans show a kitchen area with no window, an adjacent living area with a window facing an outside wall and to the rear, a separate bedroom. On inspection of this flat, the bedroom has been changed to a living room area which is served by two windows, and the living room has been changed to a dining room.
28. The new living room is an improved environment for occupants, having regard to ambient light and sunlight, but a better alternative is not reason to justify an objection in itself. Sunlight entering the former living and kitchen room would be minimal but based on my site visit, there is a light path beyond the corner of the outside wall into the window, albeit angled, serving the living/dining room and kitchen. There is also a modest gap between the wall and window allowing ambient light into the room via the window. Therefore, ambient light levels would be acceptable within this room. As to the rearrangement of the rooms, this can be done without need for planning permission and is a matter for the occupants of the flats. Conditioning room uses would not be enforceable or reasonable as occupants could easily re-arrange rooms prior to a Council visit and in any case, the justification for any restriction is unproven.
29. For all these reasons, the living conditions of the occupants of the flat are acceptable, having regard to light. Accordingly, the scheme complies with Policies STR1 and ENV3 of the New Forest Local Plan Part 1(LPP1) Planning Strategy for the New Forest District outside the National Park 2020.

Flood risk

30. Based on the EA mapping, the appellant's Flood Risk Assessment shows part of the building adjacent to 3 Bridge Street to be within a medium risk of flooding, Flood Zone 2 (FZ2). The Council's updated Strategic Flood Risk Assessment extends the flood risk areas previously published by the EA, and shows the ground floor flat (also referred to as a bungalow) at risk as there is no means of escape other than through the extended FZ2.
31. However, the Council has indicated flood resilience and resistance measures could be installed within the fabric of the flat, such as flood doors, and electrical points sited at a higher level, along with the implementation of a drainage scheme. There would also be a requirement for emergency evacuation plan. Subject to the imposition of appropriately worded conditions to secure these measures, this flood risk objection could be overcome, and the scheme would comply with Policy CCC1 of the LPP1.

Other matters

32. The flats provide much needed housing given that the Council does not have a 5 year supply of housing land. Relevant policies for the supply of housing are therefore out of date. The housing lies in a town centre within easy reach of a number of shopping and service facilities, as well as within walking distance of the local bus stops. However, the scheme involves only a small number of the residential units and as such, only small weight is attached to these housing and social benefits.

Planning and Heritage Balance

33. There is harm to the integrity of designated nature conservation areas, RASAC, AVSPA, NFSPA and NFSAC. There would be harm to NDHA and individual heritage assets, namely the Fordingbridge Conservation Area and the settings of 2 and 4 High Street, and 5 and 7 Salisbury Street.
34. The scheme results in housing and social benefits, but this is outweighed by the harm to the significance of the NDHA. Residential occupation secures a use for the building ensuring its retention. However, the adverse effects of the scheme, in terms of its fenestration would be of greater weight given the significance of the NDHA, based on its architectural and historic qualities. In accordance with paragraph 202 of the Framework, the benefits would also not be sufficient to outweigh the less than substantial harm identified for each of the designated heritage assets in respect of the considerable importance and weight carried for each of them. Under the Framework, the conflict with heritage policies would provide a clear reason for refusal. In heritage terms, the scheme conflicts with Policies STR1 and ENV3 of the LPP1, which collectively and amongst other matters, require development to be a high quality design contributing positively to local distinctiveness, to enhance the character and identity of the locality, by creating buildings, streets, spaces that are visually appealing.
35. In nature conservation terms, the scheme also conflicts with Policies STR1 and ENV1 of LPP1, and Policies DM2 and DM3 of New Forest District Local Plan Part 2: Sites and Development Management, which amongst other matters, requires the securing of mitigation in perpetuity and in a timely manner to ensure no adverse effects, in combination with other plans and development proposals, on designated nature conservation sites, and in the absence of mitigation, no alternative solution or justified imperative reason of overriding public interest. Given the magnitude of policy conflicts, there would be conflict with the development plan taken as a whole. There would be no material considerations to indicate that the proposal should be determined other than in accordance with the development plan and therefore, planning permission should be refused.
36. The appellant has expressed willingness to change the nature of the scheme by removing the modern windows and replacing them with traditional windows similar to those used originally. If the appeal was allowed, the Council has suggested a planning condition to enable this and with an acceptable scheme, this would overcome the heritage objections. However, the nature conservation objections and policy conflicts would still remain and be determinative. Conflict with the development plan, taken as a whole, would prevail and there would be no material considerations to outweigh that finding.

Conclusion

37. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR