



Appeal Decision

Site visit made on 27 September 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2023

Appeal Ref: APP/B1740/W/23/3316143

Manor House, Martin Road, Martin, Hampshire SP6 3LN

- 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 & Mrs N Debenham against the decision of New Forest District Council.
 - The application Ref 22/10792, dated 30 June 2022, was refused by notice dated 27 October 2022.
 - The development proposed is the erection of a holiday let (retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. The application form confirms that the development was completed before submission. The Council has assessed the scheme retrospectively. During my site visit, I observed that the building had been constructed and was capable of being used as a holiday let. Therefore, I have determined the appeal scheme retrospectively.
3. My attention has been drawn to the review of the Local Plan Part 2¹ currently being undertaken by the Council. Notwithstanding this, the evidence before me indicates that a Regulation 19 draft review plan has not been published for consultation. As such, any emerging policies therein carry no weight in this appeal.
4. The appeal site is located within the catchment of the River Avon SAC². Although not an issue raised by the Council on the decision notice, it is incumbent upon me as the competent authority to consider whether the development would be likely to have a significant effect on the integrity of the SAC. Comments were sought from the main parties, and I have taken them into account in my reasoning. As a result, neither party would be prejudiced by this matter being dealt with as a main issue.
5. Therefore, the main issues are:
 - whether the location of the development is appropriate, having regard to the national and local planning policies on the location of tourist accommodation;

¹ New Forest District Council Local Development Framework – Local Plan Part 2: Sites and Development Management (the Local Plan Part 2)

² River Avon Special Area of Conservation (SAC)

- whether the development would be likely to have a significant effect on the integrity of the New Forest European Sites comprising the SPA³, SAC⁴ and Ramsar site, with particular regard to recreational activity; and
- whether the development would be likely to have a significant effect on the integrity of the River Avon SAC, with particular regard to nutrient neutrality.

Reasons

Location

6. The appeal site is located in the village of Martin. Martin does not have a defined built-up area therefore, for the purposes of the development plan, it is deemed to be located in the countryside. That being the case, Policy DM13 of the Local Plan Part 2 applies, restricting visitor accommodation outside defined built-up areas except in specific circumstances. These include, amongst other exceptions, where it is part of a farm diversification project or through the conversion of existing buildings in accordance with Policy DM22. Policy DM22 concerns employment development in the countryside which is part of a farm diversification project or an established rural enterprise. As the development comprises a new building (Pond Barn) to provide visitor accommodation as part of a horsiculture establishment, neither of these exceptions applies.
7. Saved Policy CS21 of the Core Strategy⁵ supports the rural economy, including tourism, however, this is through the conversion of existing buildings. The main parties agree that, whilst a stable block previously occupied the site, this was demolished before the construction of Pond Barn. Irrespective of the appellant's original intent to convert the stables and the original building was capable of being converted, albeit with limited structural purpose, Pond Barn is a new building. Therefore, it comprises development that is not explicitly supported by Saved Policy CS21. My attention has also been drawn to Saved Policy CS19 which similarly supports the local tourism industry. This also stipulates that new development should be provided through the reuse of existing buildings or as part of farm diversification. As such, it does not support for the development.
8. I have been referred to another development which was approved⁶ by the Council. This comprised the conversion of an existing agricultural building into three holiday lets. The appellant asserts that there is no tangible difference between the approved development and the appearance of a replacement structure. Whilst this may have been the case, the evidence before me indicates that as part of the existing agricultural building was reused, it complied with the specific wording of Saved Policy CS21 of the Core Strategy and Policy DM22 of the Local Plan Part 2. It therefore is a materially different development to the appeal scheme.
9. I conclude that the location of the development is not appropriate, having regard to local planning policies on the location of development, contrary to Saved Policy CS21 of the Core Strategy as this refers to the reuse of existing

³ New Forest Special Protection Area (SPA)

⁴ New Forest Special Area of Conservation (SAC)

⁵ New Forest District Local Plan Core Strategy (the Core Strategy)

⁶ Council ref: 20/10852 dated 1 December 2020

buildings. Additionally, as the development does not satisfy any of the exceptions therein, it is not supported by Policy DM22 of the Local Plan Part 2.

10. The Council has also identified conflict with the National Planning Policy Framework (the Framework) regarding this main issue. However, paragraph 84 of the Framework supports the growth and expansion of all types of rural business, including sustainable rural tourism. As such, the development accords with the Framework in this respect.

New Forest European Sites

11. SPAs and SACs are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). The special interest of the New Forest European Sites relates to the variety of wet and dry heathland and woodland areas located within it which, in turn, support the feeding and breeding habitats for different species of birds. Consequently, the overarching objective of the New Forest European Sites is ongoing management of these habitats, ensuring they do not deteriorate. One of the issues preventing this objective from being met relates to the increase in people visiting the area for recreational purposes and an increase in vehicles on the local road network resulting from new residential accommodation.
12. As the development may have similar recreational and air quality impacts on the New Forest European Sites as residential development, when considered alone or in combination with other plans or projects, it would have the potential to result in likely significant effects on the New Forest European Sites. Therefore, it is necessary for me, as the competent authority, to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the New Forest European Sites.
13. During the appeal, the appellant submitted a signed Unilateral Undertaking (UU), pursuant to Section 106 of the Town and Country Planning Act 1990, dated 22 February 2023. This would provide a package of mitigation measures including infrastructure, access management and monitoring, bird awareness and air quality monitoring contributions. The submitted UU obligates the appellant to pay an agreed sum to the Council on the date the agreement was signed. The Council has confirmed it has formally accepted the UU.
14. Following paragraph 57 of the Framework, planning obligations must only be sought where they meet three tests, namely: necessary to make the development acceptable in planning terms, directly related to the development; and fairly and reasonably related in scale and kind to the development.
15. Policy ENV1 of the Local Plan Part 1 and Policy DM3 of the Local Plan Part 2 set out the suite of mitigation measures approved for new development. These policies are amplified by adopted Supplementary Planning Documents (the SPDs) relating to recreational impacts⁷ on the New Forest European Sites and air quality⁸ in the New Forest District outside the New Forest National Park. Although the policies refer to residential development, the SPDs confirm visitor accommodation that increases overnight accommodation bed spaces falls within this category.

⁷ Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document

⁸ Air Quality Assessments in New Development: New Forest District outside the National Park Supplementary Planning Document

16. Both SPDs set out the mitigation required which is based on the scale of development. Concerning recreational impacts, for the appeal scheme this equates to a specified financial contribution, taking into account the likely occupancy rate of the development. In respect of air quality, given the scale of the development, a contribution towards air quality measures is not required. I am therefore satisfied that the provisions are necessary to make the appeal scheme acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to it, thereby meeting the three tests identified above.
17. I conclude that, subject to the mitigation, the development would not be likely to have a significant effect on the integrity of the New Forest European Sites, with particular regard to recreational activity and air quality. It would also accord with Policy DM3 of the Local Plan Part 2 which states that development should have no adverse effects on the European Sites.
18. Whilst not referred to on the decision notice, the development accords with Policy ENV1 of the Local Plan Part 1, insofar as it relates to the measures required to mitigate the recreational and air quality impacts resulting from it.

River Avon SAC

19. The special interest of the River Avon SAC results from the diverse range of aquatic plants the river supports and in turn the rich invertebrate and fish species that feed on the plant species. The overarching conservation objective is the continued presence of the sensitive habitats and species found in the SAC. One of the main issues preventing the SAC from meeting this objective relates to an increase in wastewater being discharged into the River Avon, including pollutants or nutrients, such as nitrates and phosphates, which affect water quality. This can result in a process known as eutrophication which speeds up the growth of certain plants, threatening the aquatic ecosystem by damaging the River Avon's plants which in turn removes a food source for protected species.
20. As the development would add to the number of people staying overnight in the area it would increase the amount of wastewater being discharged into the River Avon. It is therefore likely that the development, taken both in isolation and cumulatively with other projects, would have a significant adverse effect on the integrity of the River Avon SAC. Consequently, it is necessary for me, as the competent authority, to conduct an AA concerning the effect of the development on the integrity of the River Avon SAC.
21. The Council follows the guidance and advice provided by Natural England⁹ which sets a hierarchical approach to the selection of appropriate mitigation measures to ensure that development does not add to existing nutrient burdens on the SAC. A calculator¹⁰ is used to work out the change in nutrient input which would result from new development and to inform the amount of nutrient loading that requires counterbalancing. In respect of the appeal scheme, as no such calculation has been provided, the extent of additional nutrient loading to the SAC resulting from the development is unquantified.

⁹ Nutrient neutrality principles and the use of Diffuse Water Pollution Plans (DWPPs) and Nutrient Management Plans (NMPs) February 2022

¹⁰ River Avon SAC Nutrient Budget Calculator prepared by Natural England

22. Moreover, the appropriate mitigation measures to counterbalance the additional nutrients, following the hierarchical selection approach, have not been presented. Instead, the main parties have provided suggested wording of a negatively worded condition which would prevent the Barn being used until an appropriate mitigation package is secured. This would require details of the mitigation scheme to be submitted to the Council at a later date. A further AA would then be required to be undertaken by the Council before the condition could be discharged.
23. Both main parties have presented reasons why this case represents an exceptional situation to warrant the use of a negatively worded condition. I acknowledge the comments received from Natural England regarding the acceptability of such a condition and that it has been attached to the grant of planning permissions by the Council since August 2022 without any identified problems with its subsequent discharge. However, the circumstances in this case would also apply to other proposals for overnight accommodation in the catchment of the SAC within the Council's boundary, as well as similar scenarios elsewhere. As a result, this does not lead me to conclude the appeal scheme represents an exceptional situation that allows me to impose a negatively worded condition.
24. Whilst the condition has been drafted intentionally to provide flexibility around the selection of a mitigation package for the development, both main parties identify the applicability of the Bickton Fish Farm¹¹ scheme as suitable mitigation. I have no evidence before me demonstrating that the necessary credits have been purchased by the appellant to compensate for taking the Fish Farm out of production. I am sympathetic to the appellant's concern regarding the non-refundable nature of purchasing the necessary nutrient off-setting credits at Bickton Farm without being certain of the grant of planning permission. However, this situation would likely apply to other purchasers of credits. Moreover, given that neither the Council nor the appellant have control over the Bickton Farm scheme, there is no guarantee that credits would be available to the appellant to purchase.
25. As such, the proposed condition is not sufficiently precise to provide certainty that the development would not result in an adverse effect on the integrity of the SAC. Consequently, it would not satisfy the precision test as set out in paragraph 56 of the Framework and the Planning Policy Guidance on the Use of Planning Conditions, even if I were to conclude the other five tests would be met.
26. I conclude that the development would result in an adverse effect on the integrity of the SAC, in accordance with the Habitat Regulations and there are no measures in place that would mitigate the additional nutrients resulting from the development. It would be contrary to Policy ENV1 of the Local Plan Part 1 which requires an appropriate mechanism to be secured to enable new overnight accommodation to achieve nutrient neutrality.

Other Matters

27. The development would provide social and economic benefits by attracting visitors to the area who are likely to support local businesses and facilities.

¹¹ Phosphate Mitigation Options – Bickton Fish Farm, prepared by Ricardo Energy and Environment, dated 7 February 2022

However, the size of the accommodation limits any such benefits. As the Barn has already been constructed, the opportunity for further employment resulting from the building works is limited. Any environmental benefits would also be limited given the scale of the development.

28. Although the stables on the wider landholding of Manor Farm would be available for use by visitors to Pond Barn, this does not preclude those without a horse from booking the accommodation. The stabling opportunity, therefore, is an ancillary benefit for visitors, and not the main purpose of the development.
29. I have been made aware that Manor House and the attached wall is a Grade II* listed building and part of the site is located within the Martin Conservation Area (the MCA). In accordance with Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) I am required to pay special attention to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses and preserving or enhancing the character or appearance of that area.
30. The Manor House is constructed from a combination of rubble flint and stone, and brick and flint, including a chequerboard pattern that is found elsewhere in the village. Whilst it has undergone some alterations, nonetheless the Manor House and wall have a significance/special interest that is largely derived from its layout, historic fabric and features, and its former role as the manor.
31. Pond Barn is sited away from the Manor House, beyond a field boundary lined with substantial mature trees. The stable buildings and yard are also located between the house and the Barn. Consequently, Pond Barn is neither physically nor visually connected to the listed building. Whilst access to the development would be via the main gates and drive alongside Manor House, the resultant activity would not be of a type or level dissimilar to the existing use of the property. Accordingly, the ability to appreciate and understand its significance/special interest would not be materially affected by the development. I find, therefore, that the special interest and significance of the listed building, and its setting, would be preserved.
32. Whilst Pond Barn is located just outside the MCA, the Manor House and stabling area, and therefore the access to the Barn area, lie within its boundary. Covering much of the village, the significance of MCA is derived from the informal pattern of development lining both sides of the main road through the village, the use of traditional materials and the relationship to the surrounding open countryside. The Barn's agricultural appearance, limited scale and discrete siting near existing field boundaries would preserve this significance.
33. I note that the appeal site is located within the Cranbourne Chase Area of Outstanding Natural Beauty (the AONB). Therefore, in determining the appeal I have had regard to Chapter 15 of the Framework which requires that great weight should be given to conserving and enhancing the natural beauty of the area where relevant to the scope of the application. Further, the AONB has the highest status of protection concerning these issues, reflecting the statutory purpose of the AONB. Given the scale, agricultural appearance and location alongside existing landscape features, the Barn building would be a harmonious feature in the area and, thus, would conserve the natural beauty of the AONB. Whilst the external works and facilities, comprising a hot tub, patio, lighting,

parking area and access track, introduce some domestic-style features to the area, these are minimal in scale. Some may also constitute permitted development. Additionally, had the circumstances leading to the grant of planning permission been present, I would have considered the imposition of conditions to require relevant details of the development to be submitted to and approved by the Council.

Planning Balance and Conclusion

34. The Framework supports a prosperous rural economy by enabling, in paragraph 84: (a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings; (b) the development and diversification of agricultural and other land-based rural businesses; and (c) sustainable rural tourism and leisure developments which respect the character of the countryside. This is a broader approach to the development and growth of the rural economy than set out in the Local Plan Part 2 and the Core Strategy and provides support to the development. Consequently, policies DM13 and DM22 of the Local Plan Part 2 and Saved Policy CS21 of the Core Strategy are inconsistent with the Framework. Therefore, I attach limited weight to the development's conflict with these policies.
35. The Framework also requires sites of biodiversity to be protected and enhanced in a manner commensurate with their status. As Policy ENV1 of the Local Plan Part 1 supports this objective whilst providing a suite of acceptable mitigation measures, I find it to be consistent with the Framework. Given the absence of a secured mitigation package with respect to nutrient neutrality, the development conflicts with the requirements of this policy. I attach significant weight to this conflict.
36. Even if the effects on recreational activity resulting from the development would be suitably mitigated, in accordance with Policy ENV1, nevertheless, the development conflicts with the development plan as a whole.
37. The Local Plan Part 2 was adopted in 2014 and the now Saved Policies of the Core Strategy in 2009, which the appellant contends deems them to be out of date. However, as stated in paragraph 219 of the Framework, existing policies should not be considered out of date simply because they were adopted before the publication of the Framework. Rather, that weight should be given to them according to their degree of consistency with the Framework, as I have set out above. Irrespective of this, paragraph 11di of the Framework states that the presumption in favour of sustainable development does not apply where the application of policies in the Framework that protect areas of particular importance provide a clear reason for refusing the development. This includes habitat sites (footnote 7).
38. Having regard to my findings that the development would result in an adverse effect on the integrity of the SAC, the application of the Framework's policies regarding the protection of habitat sites provides a clear reason for refusing the development. Consequently, despite the age of Saved Policies of the Core Strategy, the presumption in favour of sustainable development set out in paragraph 11dii of the Framework does not apply.
39. Therefore, I conclude that the proposed development is contrary to the development plan as a whole and material considerations, including the

provisions of the Framework, do not indicate that the proposed development should be determined other than in accordance with the development plan.

40. For the reasons set out above, having had regard to all relevant matters raised, I conclude that the appeal should be dismissed.

Juliet Rogers

INSPECTOR