



Appeal Decision

Site visit made on 31 October 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/B1740/W/23/3317087

139 Hampton Lane, Blackfield, Hampshire SO45 1WE

- 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 Andrew Hill, APE Properties Ltd against the decision of New Forest District Council.
The application Ref 22/11407, dated 8 December 2022, was refused by notice dated 1 February 2023.
 - The development proposed is erection of a single storey side and rear extension and change of use of ground floor from Class E retail to two x one-bedroom flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue is the effect of the proposal on the provision of local services and facilities.

Reasons

3. The appeal site is within the designated local shopping frontage of Blackfield and is currently occupied and in use as a retail bakery. Policy ECON6 of the New Forest District Local Plan 2016-2036 Part One: Planning Strategy (LP) seeks to prevent the loss of an occupied shop or service use that provides for everyday community needs, unless evidence is provided for active and comprehensive marketing of the site for its current use. This is in order to demonstrate the existing use is not commercially sustainable.
4. I acknowledge changes within the Town & Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as cited by the appellant. I am informed that the LP supporting text at paragraph 7.41 also recognises that the Government has expanded the scope of permitted development rights, enabling more flexibility and changes of use in shopping areas without the need for planning permission. However, LP Policy ECON6 sets out criteria in relation to proposals that do not accord with the requirements to be permitted via the GPDO, such as the appeal proposal before me.
5. The appellant has drawn my attention to Policy DM18 of the New Forest District Council Local Development Framework Local Plan Part 2: Sites and Development Management 2014 as being out of date. However, this Policy has not been referred to by the Council in its reasons for refusal, and I note Policy DM18 was superseded by LP Policy ECON6, which was adopted in July 2020.

6. Furthermore, LP Policy ECON6 is consistent with the provisions of the National Planning Policy Framework (Framework), which seeks to ensure that established shops, facilities and services are retained for the benefit of the community. I therefore find, on the substantive evidence before me, that LP Policy ECON6 is not out of date or changes to the GPDO have not diminished the weight afforded to it.
7. There are no details in the evidence before me of any previous or active marketing of the appeal site for its current use. I accept that it may be the case that the GPDO requires premises to have been vacant for a continuous period of at least three months immediately prior to a prior approval application. Nonetheless, given the importance of retaining active commercial uses which are utilised by the community, I do not find that the requirements of LP Policy ECON6 are overly onerous in order to demonstrate that the existing use is not commercially sustainable. Indeed, as well as a lack of marketing evidence presented to me, I note a third-party representation which also indicates that the current use of the site is commercially sustainable.
8. Furthermore, although I note that some premises in the local area may no longer be in a commercial use, there are a number, as identified by the appellant, which continue to be used for commercial purposes. As such, the appeal site is still within a cluster of local services and facilities. The residential use of immediately surrounding buildings does not reduce the benefit of the existing use of the appeal premises for everyday community needs. Although it may be the case that other premises in the local area provide for everyday shopping needs, the lack of any evidence that the existing use is commercially unsustainable leads me to find that despite alternative options for the community, the existing use still is well used and benefits the community.
9. With no substantive evidence put before me to the contrary, I conclude that the proposal would result in the loss of a commercial premises which would have a harmful effect on the provision of local services and facilities. The proposal would therefore conflict with LP Policy ECON6, the purpose of which I have previously outlined.

Other Matters

10. The second reason for refusal cited by the Council relates to the effect of the recreational impacts of the proposal on European Habitat Sites¹, and air quality impacts not being adequately mitigated.
11. Similar to the appeal decision² referenced by the appellant, no formal mechanism to secure appropriate mitigation measures is currently before me. If the appeal were to be allowed, I would need to undertake an Appropriate Assessment in accordance with the Habitats Regulations. However, as I am dismissing the appeal on the main issue, I have not found it necessary to consider such matters any further.
12. It has been put to me, and not refuted by the Council, that the Council are unable to demonstrate a five-year supply of deliverable housing sites and therefore paragraph 11 of the Framework is engaged. Paragraph 11 states that

¹ New Forest Special Area of Conservation, the New Forest Special Protection Area, the New Forest Ramsar site, the Solent and Southampton Water Special Protection Area, the Solent and Southampton Water Ramsar Site, and the Solent Maritime Special Area of Conservation.

² APP/B1740/21/3284016 & 3287961

where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development proposed, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

13. The provision of two flats would make a limited contribution towards addressing the Council's housing supply deficit, which I afford modest weight in favour of the proposal. Although the proposal would result in job creation and associated support of facilities and services in the local area during the construction period, and economic and social benefits as a result of their future occupation, any benefits would be offset against the loss of employment associated with the existing use.
14. The appellant states that the proposal makes effective use of land in a location close to services and facilities, would not result in any harmful effects on neighbouring occupiers living conditions and provides adequate car parking. Even if this is so, these are ordinary requirements for new development, and they do not represent a positive benefit that weighs in favour of the proposal.
15. The adverse impacts are derived from the loss of an active commercial use that provides a benefit to the community which the Framework seeks to retain, and to which I afford significant weight. Notwithstanding whether footnote 7 to Paragraph 11 of the Framework applies with respect to the Habitats Sites, I have found that, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development.

Conclusion

16. The proposal would conflict with the development plan, read as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

S Harrington MA MRTPI

INSPECTOR