



Appeal Decision

Hearing held on 9 January 2024

Site visit made on 9 January 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Appeal Ref: APP/N1730/W/23/3327801

Safari Engineering Ltd, Eversley Centre, Eversley, Hook RG27 0LU

- 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 Dave Miles, Safari Engineering Ltd against the decision of Hart District Council.
 - The application Ref 22/01532/FUL, dated 4 November 2022, was refused by notice dated 15 February 2023.
 - The development proposed is use of land for the siting of a mobile home for residential purposes.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development in the banner heading above from the application form. However as '*Planning application for*' is not an act of development, I have removed this element.
3. During the appeal process, a new version of the National Planning Policy Framework (Framework) came into effect to which I have had regard in reaching this decision. Main Parties were provided with the opportunity to comment on the new Framework at the Hearing.
4. A revised plan was submitted with the appeal documentation that indicates the location of two Sheffield bike stands. The Council has had the opportunity to comment on the revised plan through the appeal process, and I do not consider that any other party would be prejudiced by my acceptance of it. I have therefore determined the appeal based on the revised plan.

Main Issues

5. The main issues are:
 - The effect of the proposal on the integrity of the Thames Basin Heaths Special Protection Area;
 - Whether there is an essential need for a rural worker to live permanently at the appeal site; and
 - Whether the proposal provides for sustainable modes of transport.

Reasons

Special Protection Area

6. The appeal site is located within the 5km zone of influence of the Thames Basin Heaths Special Protection Area (SPA). The SPA is a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site.
7. The SPA is a network of lowland heathland sites which provide a habitat for the internationally important breeding bird species of woodlark, European nightjar and Dartford warbler. These are ground-nesting species. The sites conservation objectives can be summarised as avoiding a deterioration of habitats and minimising bird disturbance, thereby ensuring the integrity of the sites is maintained.
8. The proposal would result in one additional residential unit in the zone of influence of the SPA. Without mitigation, new residential development in this area would likely have a significant adverse effect on the integrity of the SPA, through increased recreational pressure, particularly when considered in combination with other plans and projects. In accordance with the Habitats Regulations, an Appropriate Assessment is necessary.
9. To allow residential development while still complying with the Habitats Regulations, a Strategic Delivery Framework (SDF) for the long-term protection of the SPA has been agreed between Natural England and relevant local authorities. The SDF recommends a combination of measures as mitigation. These include the provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) measures, that co-ordinate visitor management across the whole of the publicly accessible SPA (the strategic solution).
10. A signed and dated Unilateral Undertaking (UU) was passed to me at the Hearing which undertakes for the Owner to enter into a mitigation scheme prior to commencement of development. The mitigation scheme is defined within the UU as '*a suitable scheme with the Council and/or a third party whereby any impact which the development might otherwise have upon the integrity of the Bramshill Site of Special Scientific Interest which forms part of the Thames Basin Heath Special Protection Area is mitigated in accordance with SANG Policy NBE3 of the Hart Local Plan (Strategy and Sites) 2032. The Mitigation scheme shall include provision of suitable alternative green space SANG and payment of a Strategic Access Management and Monitoring Tariff as set out in the Thames Basin Heaths Strategic Access Management and Monitoring Project Tariff Guidance (Natural England 2010)*'.
11. At the Hearing, the Council maintained concerns that the UU was not appropriate and that it implies that SPA mitigation would be addressed post-determination. As the Competent Authority in this case, I am required to have certainty that mitigation measures are sufficient and properly provided for.

12. The UU does refer to the strategic solution. However, as it refers to 'a suitable scheme' as well as the 'Council and/or Third party', there is still some doubt as to the final form and delivery of the mitigation scheme, the full final details of which are not before me at this stage. Whilst I understand that the Council's SANG allocation criteria prevented the allocation prior to the appeal, I nevertheless have some lack of certainty at this stage how or where the mitigation would be delivered and whether or not it would be effective.
13. Alternative solutions which would have lesser effect exist, insofar as provision of appropriately secured mitigation that would address the likely significant effects outlined above. Furthermore, I am not aware of any reasons of overriding public interest, or other suitable compensatory measures being secured. I therefore conclude that, due to mitigation not being appropriately secured, the effect of the proposal would be unacceptable on the integrity of the SPA in the context of the Habitats Regulations. It follows that the proposal would fail to comply with Policy NBE3 of the Hart Local Plan (Strategy and Sites) 2032 adopted April 2020 (LP) and Saved Policy NRM6 of the South-East Plan, which requires new development to mitigate any impacts on the SPA. The proposal would also conflict with the habitats and biodiversity provisions of the Framework.

Essential need

14. The appeal site is located within the countryside outside of any settlement boundary. LP Policy SS1 sets out the spatial strategy for development in the district. This indicates that new homes will be provided within defined settlements, on previously developed land in sustainable locations, and on allocated sites as shown on the Policies Map. New homes outside of settlement policy boundaries are permitted where development would accord with specific policies in the LP covering amongst other things, essential housing in the countryside.
15. LP Policy NBE1 of specifies the types of development permitted in the countryside. The explanation for the policy outlines that a more restrictive approach is taken in recognition of the countryside's intrinsic character and beauty. However, the Policy does not restrict all forms of development in the countryside and recognises that development can take place which is beneficial to the countryside and the people that live and work there. As such only developments expressly listed as exceptions in the policy are supported such as where the proposal meets the proven essential need of a rural worker to live permanently at or near their place of work.
16. Whilst it is put to me that the Framework does not apply such a narrow range of restrictions as LP Policy NBE1, and wording differs from that within the Framework, the planning system allows for local discretion in devising policies. Given the intent of the Policy, I find its approach broadly aligns with the provisions of the Framework including those relating to recognising the intrinsic character and beauty of the countryside and rural housing. I therefore find, for the purposes of determining this appeal, LP Policy NBE1 is not out of date.
17. The appellant operates an established commercial business specialising in repair, refitting, refurbishment, rebuilding and spares for motor vehicles, particularly four wheeled drive vehicles. A mobile home is currently sited at the appeal site which is used for non-residential purposes ancillary to the commercial use of the wider site. The appeal proposal seeks to allow the

residential use of the mobile home primarily for security purposes. Given the rural location, and character of business, I find the proposal relates to a rural worker, and this was also agreed at the Hearing by the Main Parties.

18. A number of examples of persistent break-ins at the site has been outlined by the appellant where items including vehicle parts, tools, equipment or red diesel was stolen, as well as attempted break-ins which were prevented due to the appellant being on-site. The written evidence provided includes a diary kept of break-ins or attempted break-ins in June and July 2023 which indicates 7 attempts within 7 weeks, which the appellant states is fairly typical, and indeed at the Hearing, Mr Miles states that 2-3 attempted break-ins have previously occurred within a week.
19. The appellant does not always report break-ins to the police or obtain a crime number, and therefore a full log of crime numbers is not before me. Nevertheless, it is clear that break-ins and rural security is a genuine concern and I note that the Council do not dispute that crime has taken place and that there is a need for increased security measures. This is especially the case as the stock kept is valuable and sought after, particularly some vehicles which are kept on the site as evidenced within witness statements from the appellant's clients. These statements also highlight the potential risks to the business from the loss of clients if security could not be maintained.
20. A large amount of spares and vehicles are stored outside, with the commercial buildings at the site appearing to be fully utilised. In addition, I am informed there is difficulty in securing buildings and contents insurance cover due to the fire hazards associated with the timber construction of the buildings, and the activities associated with motor traders using the application of heat. The substantive evidence indicates that only one provider would provide some cover for the contents of the building on the basis the insured has a capable adult living on site 24 hours a day 7 days a week to report incidents. Such a policy has been deemed economically unviable by the appellant due to the cost of cover, thereby increasing the effect on the business if stock or equipment is lost to theft.
21. Against this background, as well as existing security measures at the site including CCTV coverage, fencing of variable height around the premises, alarms and flood lighting, the appellant has been staying at the site overnight to provide onsite security. Whilst it is the case that the occupier of the mobile home would need to sleep, I have no doubt that being onsite would provide a quicker response to any alarm and significantly allows for the use of security dogs within the site which require a handler to be present.
22. Mr Miles stated at the Hearing that the CCTV system has been expanded since 2002. Although the CCTV was active during my site visits, and provides good coverage of the site, I was also informed at the Hearing by Mr Miles that the average burglary takes 8 minutes, and therefore would require a quick response to prevent a burglary taking place.
23. Mr Miles also informed me, which wasn't disputed by the Council, that he currently lives some 10 minutes travel distance from the site. Clearly even if the appellant was immediately informed of an attempt to break-in, given the above timings which I have no substantive evidence to lead me to consider are unreasonable estimations, the loss of valuable stock could have taken place. Furthermore, occupation away from the site, being at Mr Miles' home or any

alternative nearby accommodation, would prevent the use of security dogs at times when a handler may not be present.

24. I have also been informed that there is an existing one bedroomed residential unit at the commercial premises. At the Hearing the Council confirmed that this does not benefit from planning permission, although the appellant stated that the unit has been occupied for a considerable period of time and is the self-contained unit referred to within an appeal decision¹ from 2002. Notwithstanding, this is currently occupied by the appellant's elderly parents who are unable to provide security due to ill health and could be vulnerable to any potential crime at the premises.
25. Although no formal financial accounts have been provided within the evidence, a letter from Hollanger Burke Ltd states that the business has been financially healthy for at least the last three years. This letter indicates a gross pre-tax profit of around £38000 per financial year and I have no substantive evidence before me to indicate that this is not accurate. Against this, it is put to me, that night security guard cover on site between 5pm to 8am Monday to Friday, and 12pm Saturday until 8am Monday would result in an annual salary of £69000, with a further financial burden to cover periods of leave. Given an hourly wage of £12-£13, these figures do not appear unreasonable.
26. I accept it may be the case that additional security workers could be at site during non-work hours, and this could also allow for, amongst other security measures, the use of security dogs without living at the site. However, given the above figures, even if it is the case that the hours are reduced due to extended operating hours of the business, or that a part of this cost would be off set against the appellant's working hours, noting he currently provides out of hours security cover, I find that the cost of an additional security worker is likely to be financially prohibitive.
27. I also observed at the site visit that the commercial premises are surrounded by woodland to the rear, which would allow reasonably unfettered and screened access to the boundary fence of the commercial premises. Whilst it has not been clearly demonstrated that differing fencing, including raising the height and fencing that reduces visibility to the front of the site have been robustly explored, I observed the existing fencing is of a height that prevents access without difficult scaling, and it is not clear how additional height would significantly further deter such attempts to access the site, particularly given the woodland cover.
28. Given the number of break-ins experienced at the site, the current physical security arrangements do not appear to provide a reliable deterrent, with a number of the documented break-ins being unsuccessful due to the presence of someone on site. As such, having regard to the regular instances of break-ins, high value of stock at the appeal site, and associated risk of loss of clients, the economic losses that could accrue from failure to prevent or deal promptly with instances of security could be significant on the future sustainability of the business.
29. Consequently, I find that the evidence leads me to conclude that, due to the particular circumstances of this business including the character of the commercial premises and surrounding woodland, and type and value of stock,

¹ APP/N1730/A/01/1077196

there is a demonstrated essential need for a rural worker to live permanently at the appeal site. The proposal in this regard therefore accords with LP Policy SS1 and NBE1, the purposes of which I have outlined above. The proposal would also accord with the provisions of the Framework in respect of rural housing.

Transport

30. LP Policy INF3 seeks to promote the use of sustainable transport modes, improve accessibility to services and support the transition to a low carbon future. The Policy outlines that development will be supported which does not have a severe impact on the operation, safety or accessibility of the local or strategic highway networks. In this regard I find this Policy to be broadly consistent with the Framework in terms of sustainable modes of transport and effects on highway safety.
31. The Council adopted a Cycle and Car Parking in New Development Supplementary Planning Document (SPD) in December 2023, after its refusal of planning permission. The Council confirmed at the Hearing that this guidance re-affirms that outlined within the Council's Technical Advice Note: Cycle and car parking in new development (2022) as referred to in the Council's Officer report. The SPD seeks, in part, to ensure new development provides the appropriate amount of cycle and car parking and be designed to encourage a shift away from car use towards walking, cycling and other sustainable modes of transport.
32. The proposal provides for two off road parking spaces as well as cycle stand provision. The appeal site is within a rural location, and notwithstanding the existence of some pedestrian pavements, the requirement to cross busy roads and distance to the facilities found in nearby settlements is likely to result in reliance by intended occupiers on private transport.
33. However, it has not been demonstrated how the number of parking spaces proposed would be inadequate or how any additional vehicular parking spaces would encourage a shift away from car use. Whilst the parking spaces are within the existing commercial compound, given the proposed residential occupation would be intrinsically linked with the commercial operation, I do not find that there would be any resulting conflict between the residential vehicle or cycle parking and the use of the wider site. No substantive evidence has been put to me as to how the reduction in commercial parking would harmfully effect the business, particularly given the large amount of parking I observed at the site.
34. The red outline of the appeal site provided in submitted plans does not incorporate the existing access or show an access to the public highway. However, no new access is proposed or required, and taking account of my observations of the site, there is little before me to indicate that the existing access is inadequate, has substandard visibility or the proposal would otherwise compromise highway safety.
35. Consequently, noting the inclusion of cycle parking, I conclude that the proposal would adequately provide for sustainable modes of transport at the site. The proposal would not conflict with the criteria listed in LP Policy INF3 or saved policy GEN1 of the LP 1996-2006 which, amongst other matters, require adequate arrangements to be made for access and parking of vehicles.

Other Matters

36. No adverse harm has been identified with regards to the visual impact of the scheme on the character and appearance of the area or occupiers living conditions. Nevertheless, these are ordinary requirements for new development, and they do not represent a positive benefit that weighs in favour of the proposal.
37. Furthermore a 'fallback position' has been advanced in relation to the appearance of the existing siting of a mobile home for ancillary purposes to the lawful use of the land. However, given that no adverse harm has been identified in terms of character or appearance, I afford any such fallback position minimal weight.
38. As noted previously, the appellant's parents live at the commercial premises, and are elderly and vulnerable. Age is a protected characteristic and therefore I have had due regard to the three aims of the Public Sector Equality Duty set out in the Equality Act 2010, including removing or minimising disadvantages that may be suffered by this group.
39. It was clarified by Mr Miles at the Hearing that he is not a formal carer for his parents. Furthermore, I have not been provided with full and detailed medical evidence as part of this appeal. Nonetheless, on the evidence that is before me, the presence of the appellant living at the site would no doubt be of benefit to the appellant's parents, particularly in the instance of any security breach. These are personal circumstances which weigh in favour of the proposal.
40. I have also found that the essential need for a rural worker to live permanently at the appeal site which would support rural business, rural employment and economy, and a reduction in crime in accordance with the general aims of the Framework has been demonstrated. However, these are not matters which outweigh the harm that would be caused by the proposal in respect of my aforementioned conclusions on the first main issue, and associated development plan conflict. A refusal of planning permission is a proportionate and necessary approach to the legitimate aim of ensuring the protection of the integrity of the SPA.

Conclusion

41. 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

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green

Dave Miles

Lee Andrews

Adrian Hiron

Tim Harrower

Green Planning Studio Ltd

Appellant

London Mud Club

Ambulance Medical Support Services (UK)
Ltd

Surrey 4x4 Tours and Training & 4x4 Play
and Training

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Miller BSc(Hons) MSc MRTPI ET Planning .

DOCUMENTS submitted at the Hearing

- Signed Unilateral Undertaking dated 8th January 2024;
- Witness statement of Lee Andrews;
- Witness statement of Tim Harrower;
- Witness statement of Adrian Hiron;
- Witness statement of David Miles;
- Witness statement of Andrew Bunyan;
- E:mail – UU comment from Council Solicitor.