



Appeal Decision

Site visit made on 23 January 2024

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/A1720/W/23/3323258

Andark, 256 Bridge Road, Swanwick, Hampshire SO31 7FL

- 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 Goddard against the decision of Fareham Borough Council.
 - The application Ref P/21/1317/FP, dated 30 July 2021, was refused by notice dated 17 March 2023.
 - The development proposed is the change of use of land adjacent to Diving Lake to a Motorhome and Camping site for up to 7 Motorhomes and 6 Tents (Excluding Caravans) and Construction of Toilet/Shower Facilities.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land adjacent to Diving Lake to a Motorhome and Camping site for up to 7 Motorhomes and 6 Tents (Excluding Caravans) and Construction of Toilet/Shower Facilities on land at Andark, 256 Bridge Road, Swanwick, Hampshire SO31 7FL in accordance with the terms of application Ref P/21/1317/FP, dated 30 July 2021, subject to the attached schedule of conditions.

Procedural matters

2. Prior to my determination of this appeal, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 which replaced the previous version. I have taken into account the relevant provisions of the revised version in the determination of the appeal and any references to the Framework in this decision relate to the revised document. In having regard to the matters that are most relevant to this appeal, there are no material changes to the Framework of relevance to the substance of this appeal. Therefore, I am satisfied that no party to this appeal would be prejudiced by the changes to the national policy context.
3. The Fareham Local Plan 2037, April 2023 (FLP) was adopted after the determination of the application by the Council. The FLP replaces the Fareham Local Development Framework Core Strategy 2011 and the Fareham Local Plan Part 2: Development Sites and Policies 2015 and therefore the policy quoted on the decision notice relating to the replaced plans is no longer relevant. The relevant changes to the local planning policy context are set out in the Council's Statement of Case which was available to the Appellant prior to the submission of final comments. In addition, the Council's Decision Notice also

made reference to the relevant policy of the emerging FLP. I have therefore determined the appeal on the basis of the policies contained within the FLP. I am satisfied that no party has been prejudiced in this regard.

Main Issues

4. The main issues are:

- The effect of the proposal on the living conditions of the occupants of residential properties on Oslands Lane with particular regard to noise and disturbance.
- The effect of the proposal upon European Protected Habitat Sites.

Reasons

Living conditions

5. The appeal site comprises an area of predominantly grassland located to the north and east of the Andark Diving Lake, which is a purpose built diving facility, and ancillary pavilion. An area of woodland abuts the north, east and southern boundary of the site.
6. Access to the site is via Oslands Lane which is a private unmade road and public right of way (PROW) that is predominantly narrow along its length and contains three passing places. Oslands Lane extends from Bridge Road (A27) and upon reaching the gated entrance of the Andark site it continues as a PROW only along the northern boundary of the appeal site. A small number of residential properties are located to the north of Oslands Lane. These are set at varying distances to the lane from where they are also accessed.
7. The proposal seeks the change of use of land for use as a campsite for up to seven motorhomes and six tents. A small shower and toilet block is also proposed to be constructed close to the entrance to the site. The campsite would be open on a seasonal basis between 1 March – 30 November (inclusive) each year. The Appellant indicates that the proposed use has occurred on an unauthorised basis since 2019 and the planning application was made to regularise this activity.
8. The planning application was accompanied by a 'Highway Technical Note' (TN) which suggests that a motorhome pitch would generate 2 vehicular movements per day and a tent pitch would generate 4 vehicular movements per day. Based on the proposed number of pitches, that would cumulatively equate to a total of 38 additional vehicular movements on the lane per day at times when the site is fully occupied.
9. The Appellant contends that, over the course of a 12 hour day, the proposed use is likely to result in little over 3 two-way movements per hour on Oslands Lane in the months when the site is operational, which equates to one vehicle every 20 minutes at times when the site is fully occupied. In this regard, the TN identifies that the site generally operates at an average of 50% capacity during the 6 months that it is open and there are only certain dates in August when it operates at full capacity.
10. The Council has drawn my attention to an extant planning permission (P/11/0197/FP) for the Diving Lake. This was permitted in 2011 and limits sessions to be held at the Diving Lake to one per day with a maximum of 50

people permitted at each session. This permission identifies that use of the Diving Lake would result in approximately 10 vehicular movements per day on Oslands Lane. Visitors would primarily park within the car park at the western end of Oslands Lane and be transported to the Diving Lake by minibus. These requirements were secured by an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 which remains enforceable.

11. Hampshire County Council, in its capacity as highway authority, raised no objections to the proposal and identified that the number of trips generated would not have a severe detrimental impact on highway safety in the local area. However, the role of the highway authority is to consider the effect of traffic generation arising from the proposal on the safety and free flow of traffic on the public highway network only. I recognise that the views of the highway authority were based primarily on the operation of the junction of Oslands Lane and Bridge Road and therefore offered no endorsement of the suitability of the unadopted Oslands Lane to access the proposed campsite.
12. I observed at my site visit that Oslands Lane is lightly trafficked and, due to the width of the road, vehicular speeds are low. The properties served by Oslands Lane are either elevated above the lane or set back behind private driveways or relatively large front gardens.
13. In considering the potential impact of noise and disturbance on the living conditions of nearby residents, I have taken into account to the relatively low level of trip generation that would result from the proposals, the relatively low vehicular speeds, the set back of properties in the vicinity, the operational period and the fact that site is unlikely to operate at full capacity throughout that period. These are all factors that lead me to conclude that any noise and disturbance would be infrequent and not of a level that would warrant the dismissal of this appeal.
14. Oslands Lane is a relatively short length of unadopted road. Whilst there may be infrequent occasions that two-way vehicles need to pass, I consider that the three vehicle passing bays are adequate to serve this length of road. The limited duration that one vehicle may have to wait in a passing bay to enable another one to pass would not by any reasonable estimation give rise to excessive nuisance.
15. I have taken into account the cumulative effect of the proposals with the vehicular movements associated with the use of the Diving Lake. I have also taken into account the Council's view that the Appellant does not abide by the obligations in the legal agreement. However, I have no evidence to suggest that such obligations are unenforceable and, as such, no evidence of any impediment that would affect the ability of the Council to enforce such obligations.
16. I recognise that the 38 movements per day is significantly higher than the 10 that were deemed acceptable when planning permission was granted for the Diving Lake. However, taking into account the factors identified above, I am not persuaded that the cumulative impact of traffic using the lane would cause noise, disturbance and nuisance of an extent that would materially harm the living conditions of nearby residents.
17. For the above reasons, I do not consider that the proposal would materially harm the living conditions of residents living along Oslands Lane due to noise

and disturbance associated with the proposed vehicular movements. Consequently, there would be no conflict with Policy D2 of the FLP. This policy, amongst other things, requires that development proposals, including changes of use, should not, individually, or cumulatively, have an unacceptable adverse environmental impact, either on neighbouring occupants, adjoining land or the wider environment.

European Protected Habitat Sites

18. The Conservation of Habitat and Species Regulations 2017 (as amended) (the Regulations) require that where a project is likely to have a significant effect on a European site¹, either alone or in combination with other projects, the competent authority must make an Appropriate Assessment of the project's implications in view of the relevant conservation objectives.
19. The appeal site is within 5.6km of the designated 'Solent Sites', namely the Southampton Water Special Protection Area (SPA) and Ramsar site; the Solent Maritime Special Area of Conservation (SAC); and the Solent & Isle of Wight SAC. It is also within the buffer zone of the New Forest SPA, SAC and Ramsar site; and the New Forest Site of Special Scientific Interest (SSSI) (the New Forest Sites).
20. The Solent Sites are at risk from excessive nutrients arising from wastewater discharge. Both the Solent Sites and the New Forest Sites are at risk from recreational disturbance from an increase in the local population. The proposal would result in a number of additional recreational visitors. Whilst the impact upon water quality may be limited, in combination with other developments it is likely that the proposal would have significant effects on the Habitats Sites. Therefore, as the competent authority, I am required to undertake an Appropriate Assessment.
21. As part of partnerships which include Natural England (NE) and local councils, mitigation strategies have been prepared to address the potential harmful effects from additional recreational disturbance, and developers are required to make financial contributions to the delivery of those strategies.
22. The appellant has made financial payments to the Solent Recreational Mitigation Partnership and to an Interim Mitigation Solution (New Forest Recreational Disturbance Mitigation). Both the Council and NE raise no objection in regard to the mitigation for recreational disturbance and I find no reason to consider otherwise.
23. In regard to water quality, NE advises that developers are required to demonstrate nutrient neutrality. A scheme has been established with third party providers to enable nitrate mitigation via an interception wetland within the catchment of the Solent at Whitewool Farm within the South Downs National Park. The Council has entered into a legal agreement with the owner and tenant of Whitewool Farm and South Downs National Park Authority to secure this off-site mitigation for development within their administrative area. The purchase of sufficient credits by a developer to meet the nitrate mitigation capacity of a development enables nutrient neutrality to be demonstrated.
24. The proposal would generate an annual nutrient budget of 5.58kg TN/year. The appellant has entered into a deed of allocation to reserve the necessary

¹ As defined at Regulation 8 of The Conservation of Habitats and Species Regulations 2017 (as amended)

credits at Whitewool Farm. I am satisfied that the Appellant is legally bound to confirm the required credits and to pay the commuted sum within a reasonable timeframe following the grant of permission. However, the Council is not party to the deed and seeks a planning condition to confirm that the required credits have been allocated to the scheme at Whitewool Farm if I were to allow the appeal. The Appellant raises no objection in this regard.

25. I have consulted NE during my determination of this appeal. Subject to securing the mitigation measures identified above and the imposition of a planning condition relating to the management of the impacts associated with the construction of the toilet/shower facilities, NE have no objections to the proposal.
26. In concluding my Appropriate Assessment, I am satisfied (subject to the condition) that there would be no adverse effect on the integrity of the protected sites from recreational disturbance or excessive nitrates when considered alone or in combination with other development. The proposal complies with the Regulations and there are no other unacceptable environmental effects.
27. The proposal therefore accords with Policies NE1, NE3 and NE4 of the FLP. These policies seek to protect priority species and where appropriate enhance protected habitats; and to ensure that development appropriately mitigates impacts upon Habitats Sites.

Other matters

28. The Council has drawn my attention to a previous appeal decision that was made in June 2010 (Ref: APP/A1720/A/2123957) in respect of a planning application for the Diving Training Lake with ancillary pavilion building and landscaping. That appeal decision predated the planning permission granted by the Council for the Diving Lake and ancillary building, as identified above.
29. In dismissing the appeal, the Inspector found that any significant increase in vehicular movements could have an impact on the living conditions of the occupiers of properties on Oslands Lane in terms of convenience in using the track and possible disturbance when in their gardens and that meeting vehicles may have to back up considerable distances. The Inspector concluded that the proposal would be unacceptable in relation to the living conditions of neighbouring occupiers.
30. However, the Inspector also identified that he was not satisfied that he had sufficient information to understand what the extent of vehicle movements along the lane is likely to be and that he was unable to reach a reasoned conclusion that the number of vehicle movements would be acceptable.
31. The appeal decision predated the provision of the three passing bays now installed and recognised that there was uncertainty in the prediction of vehicle movements. By contrast, there is common ground between the main parties in the appeal before me that the TN provides a reliable assessment of the likely average traffic movements arising from the motorhome and tent pitches. In addition, there is a degree of reliability in the current number of vehicular movements associated with the permitted use of the Diving Lake and ancillary building that are subject to the provisions of the Section 106 Agreement.

32. Therefore, I accept the Appellant's view that when considering the effect on living conditions, it is appropriate to consider the actual traffic generation and its regularity to give an understanding whether the proposals are likely to give rise to any potential negative effects on living conditions. Unlike the circumstances in the previous appeal, I have relatively reliable information on predicted vehicular movements. Furthermore, the provision of the passing bays leads me to conclude that there would be no need for vehicles to back up any considerable distances and any waiting time for vehicles to pass would not be unduly excessive.
33. Taking into account the above, there are material differences between the circumstances in the previous appeal and those in the appeal before me. Consequently, I have determined the appeal scheme on its own individual planning merits.
34. I have also taken into account the concerns of interested parties which, in addition to the main issues that I have identified above, include concerns relating to pedestrian safety, a lack of street lighting on the lane, construction traffic, maintenance concerns, and the occurrence of other unauthorised uses, amongst other matters. These concerns have been carefully noted and some partly considered in my main issues. However, they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for these other reasons.

Conditions

35. I have considered the proposed planning conditions, including a number of pre-commencement conditions, that have been provided by the Council. I have considered these against the advice given in paragraph 56 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the PPG. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability.
36. The application includes built development associated with the construction of the toilet/shower facilities. Although the Council has not suggested a condition providing any time limit for the commencement of the development, I consider that one is necessary. I have also imposed a condition (No. 2) relating to the approved plans in the interests of certainty.
37. In order to ensure that the proposal operates within the parameters of the planning application, safeguards the character and appearance of the area and ensures that there would be no further adverse impact on protected sites, a condition is necessary that limits the use to between 1 March to 30 November (inclusive) in each calendar year (No. 3). In order to protect the living conditions of the occupants of nearby residential properties and also to ensure no further adverse impact on protected sites, a condition is necessary that limits the use of the site to seven motorhomes and six tents at any given time (No. 4).
38. A condition is necessary to ensure that the positioning of tents/motorhomes accords with the positions of pitches shown on the approved site plan in order to safeguard the character and appearance of the area (No. 5). A condition is also necessary to ensure that no caravans are stationed at the site due to the

inadequacies of the access lane to cater for caravans and to protect the living conditions of the occupants of nearby residential properties (No. 6).

39. In the interests of pedestrian safety, a condition is necessary requiring the submission and implementation of details of signage to be installed on Oslands Lane to caution drivers of pedestrian use (No. 7). In order to protect the adjacent woodland and to maintain the character and appearance of the area, conditions are necessary requiring the submission and implementation of details of the means of enclosure to the ecological buffer along the eastern boundary of the site, details of landscaping and measures to ensure the replacement of trees or plants that are removed or die within a period of 5 years from first planting (Nos. 8, 9, and 10).
40. A condition is necessary to demonstrate that suitable mitigation has been secured in relation to the effect that nitrates from the development has on Habitat Sites (No. 11). In order to mitigate the risks of any pollution from machinery or materials during the construction phase of the built development from entering the water regime, a condition is necessary requiring the submission and implementation of a Construction Environmental Management Plan (No. 12). Although such condition was not suggested by the Council, following my consultation with NE I am satisfied that such condition is necessary. Given the nature and purpose of the condition, I do not consider that any party would be prejudiced by its imposition.

Conclusion

41. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

CONDITIONS SCHDULE

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans/documents:
 - i) Location Plan – drwg No. A-XX-1000 Rev P1
 - ii) Proposed Site Plan – drwg No. A-00-100
 - iii) External elevations and plans toilets – drwg No. I-00-500 Rev I2
- 3) The use hereby permitted shall take place only between 1 March – 30 November (inclusive) in each calendar year.
- 4) A maximum of seven motorhomes and six tents shall be stationed at the camp site at any given time.
- 5) The positioning of individual tents/motorhomes on the application site shall accord with the position of pitches as shown on the approved site plan (drwg No. A-00-100).
- 6) No caravans shall be stationed at the camp site hereby permitted.
- 7) Within one month from the date of the grant of planning permission, a proposed scheme of signage to be installed on Oslands Lane to caution drivers of the presence of walkers on the footpath and of the requirement to give way to users shall be submitted to the Local Planning Authority in writing. The approved signage shall be installed within one month from the date of approval of that scheme and shall thereafter be retained.
- 8) Within one month from the date of the grant of planning permission, further details of the means of enclosure of the ecological buffer (as shown on drwg No. A-00-100) along the eastern boundary of the site shall be submitted to the Local Planning Authority to prevent public access to this area. The approved means of enclosure shall be constructed on-site within one month from the date of approval and shall thereafter be retained.
- 9) Within one month from the date of the grant of planning permission, a landscaping scheme shall be submitted to the Local Planning Authority with a specification for the provision of a species-rich native hedgerow or shrub/tree planting (to reflect those species present within the adjacent woodland) within the ecological buffer at the eastern boundary and along the inside of the fence line along the northern/southern boundaries of the site.
- 10) The landscaping scheme, submitted under Condition 9 shall be implemented and completed within the first planting season following the approval of the landscaping scheme or as otherwise agreed in writing with the Local Planning Authority and shall be maintained in accordance with the agreed schedule. Any trees or plants which, within a period of five years from first planting, are removed, die or, in the opinion of the Local Planning Authority, become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.

- 11) Within one month from the date of the grant of planning permission, evidence shall be submitted to the Council to demonstrate that the required nitrate mitigation capacity has been allocated to the development pursuant to the allocation agreement dated 16 February 2023 between (1) William Northcroft Butler and James Nicholas Butler, (2) H N Butler Farms Ltd and (3) Andrew Patrick Goddard & Stephanie Jane Goddard.
- 12) No built development shall take place, including any works of demolition, until a Construction Environmental Management Plan has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - i) details of methods of pollution control to ensure that no pollution (such as debris from dust or surface water run off) is able to enter the water environment.
 - ii) details of the storage and disposal of any waste generated on site.
 - iii) details of procedures to ensure that any sediment/concrete/other debris that may be accidentally released during construction will be captured to prevent it from entering the water environment.
 - iv) details of procedures to ensure biosecurity to ensure that all equipment brought on to site does not bring with it any contaminants that may be harmful to the water environment.

The approved Construction Environmental Management Plan shall be adhered to throughout the construction period of the development.