

Appeal Decision

Site visit made on 20 August 2024

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2024

Appeal Ref: APP/X1355/W/24/3345250

**The Brown Horse Inn, High Stoop, Tow Law, Bishop Auckland,
County Durham DL13 4HJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs B and J Baines against the decision of Durham County Council.
 - The application Ref is DM/22/03451/FPA.
 - The development proposed is described as "Planning permission for a new building to house a swimming pool with changing facilities, ancillary toilets to support the existing restaurant, with accommodation above. An additional new building for storage and function use. Redevelopment of existing car park to support the scheme".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording matching that on the Council's decision has been entered. As neither of the main parties has provided written confirmation that a revised description of development has been agreed, I have used the one given on the original application. I am satisfied that no prejudice arises as a result.
3. In November 2023, Areas of Outstanding Natural Beauty (AONBs) were renamed National Landscapes. However, the application, decision of the Council, appeal cases, National Planning Policy Framework (the Framework), and policies in the County Durham Plan, adopted 2020 (the Plan) all still refer to AONBs. As such, for consistency and clarity, my decision will do the same.

Main Issues

4. The main issues are
 - whether or not the proposal would be financially sound,
 - the effect of the proposal on the character and appearance of the area,

- the effect of the proposal on biodiversity, and
- whether or not the construction of the proposal would meet the required standards.

Reasons

Financially sound

5. Policy 10 of the Plan sets requirements for development in the countryside, and, relevant to this proposal, requires that development necessary to support the expansion of an existing business will be supported where it can be clearly demonstrated that it is, or has the prospect of being financially sound and will remain so.
6. The business has grown substantially since the appellants took it over in 2008, and to continue to grow, additional space and facilities, as well as a reordering of the existing space and facilities are apparently required. The appellant has submitted a Business Plan Appraisal Document, which states that the proposal would lead to a 70% increase in core business to secure the business for at least another twelve to fifteen years. It also sets out the expected increase in full- and part-time jobs, and details how the proposal would lead to an increase in the facilities and services offered at the site.
7. However, much of that submission is simply assertion. In meeting the requirements of the policy, I would expect more detailed information and analysis in order to meet the "clearly demonstrated" threshold. By way of example, an indicative cost of the pool construction is provided, but there is no information about likely running costs, or indeed, the total project construction cost. Similarly, there is nothing before me which demonstrates the financial ability of the business to deliver and sustain the proposal either as a whole, or broken down into its component parts, such as information (even indicative) on overall build-costs, finance availability and cost, running costs, the likely time to see a return on investment, projection of business growth (such as likely room occupancy or demand, research around likely numbers of event bookings, increased trade at the restaurant) and so on.
8. I note that the pool, jacuzzi and gym are of particular concern to the Council, and it is not, in my opinion unreasonable to seek further information to establish whether or not their provision would be sustainable, as part of the overall demonstration of the financial sustainability of the increased size of the business, in line with the requirements of the policy.
9. Whilst I would expect that the appellant would have a sound understanding and expectation of the financial sustainability of the proposal in deciding to make their planning application, it has not been clearly demonstrated here.
10. I accept of course that the Framework seeks to build a strong, competitive economy, and that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt.
11. However, that is set against a very clear development plan requirement to show that development of this nature supports future business viability and to clearly demonstrate that the expansion is or has the prospect of being financially sound. Simply, that test has not been met in the evidence

submitted with this appeal. As such, the proposal conflicts with Policy 10 of the Plan.

Character and appearance

12. The site is in a prominent position, on a crossroads in a relatively open and rural area. As such, the existing building on the site, and the existing extension built to provide rooms under a planning permission granted relatively recently in 2014 are very visible. At present the host building appears as a long block in mixed materials, with mixed rooflines, but a relatively low pitch to the roof on the newest part. The existing building has clearly been extended and much altered over time. A large car park lies to the rear, with indistinct boundaries between it and the land outside it.
13. Nevertheless, the site does not sit in total isolation, with other development close by, in a variety of materials, scale, appearance and uses as would be expected at a crossroads location. Indeed, when approaching the site from all four directions, it is never seen in isolation, with other development seen either behind it, next to it, within the same views, or on the approach to it.
14. The form and scale of the proposal are consistent with the host property, being relatively shallow-pitch roofs, with gable ends, set parallel to or perpendicular to that host. I accept that the materials and details of the proposed buildings would be very different to the host. However, given the somewhat plain appearance of the host, I do not consider that this is in itself harmful or that it would dominate or otherwise harm the character and appearance of the host building. Whilst the proposal would be plainly visible and different, the overall completed appearance would, to my mind provide an attractive addition to the site, distinct from, but still clearly related to and in-service of, the host property.
15. The layout of the proposal, with building 1 perpendicular to the host, and then building 2 parallel to it within the existing car park, creating a courtyard effect, would in my opinion further limit the visual effect of the proposal in terms of its prominence and overall size.
16. This layout and appearance is not inconsistent with the overall form, appearance and character of other development in the area, in each direction along the A68 and the B6296, which features a wide variety of materials, forms, scales and relationships between buildings.
17. The site is within 50m of, but not within the North Pennines AONB. The Framework requires that development within its setting be sensitively located and designed to avoid or minimise adverse impacts on it.
18. Given the current character and appearance of the site as a whole, its immediate surroundings and the buildings within it, I do not consider that a particularly positive contribution is made by the site at present. I accept that the site is visible on the approach to the AONB and from within it, but do not consider that the proposal would cause the site as a whole to have any greater negative effect or cause any further harm than that which the Council already identifies. The site is already clearly visible, already prominent and despite the increase in its size, I do not find that the proposal, in more muted and more sympathetic materials would increase

those effects such that it would dominate and adversely affect the character and appearance of the surrounding landscape or the special qualities of the AONB.

19. The car park extension would increase the developed footprint of the site, along the B6296, away from the main A68, and away from the AONB. The existing building and road already sit between the car park and the AONB, and the proposed buildings would also sit between them. On the opposite side of the B6296, a caravan storage use has a large area of hardstanding, and there are other sites along the A68 with large areas of enclosed hardstanding in otherwise green and open spaces.
20. Given that buffer, as well as the proposed materials and landscaping, coupled with the already somewhat indistinct boundary between the application site and other land in the appellants ownership, I am satisfied that the proposed car park extension would not appear as an unacceptable, harmful or unwarranted incursion into the countryside.
21. Overall then, I find that the scale, materiality, detailing and positioning of the buildings, and the extent of the car parking area would not adversely affect the character and appearance of the host building, the surrounding landscape, the special qualities of the AONB and would not represent an unacceptable incursion into the countryside.
22. The proposal would not therefore have an unacceptable effect on the character and appearance of the area, and would not conflict with Policies 8, 10, 29, 38 and 39 of the Plan, nor would it conflict with national policy in the Framework.

Biodiversity

23. I note that as a result of the date of its submission, the proposal is not subject to the statutory requirement for 10% biodiversity net gain. It is however still subject to the requirements of Policy 41 in the Plan, echoed in the Framework, to avoid significant harm to biodiversity, appropriately mitigate any harm or as a last resort compensate for that harm.
24. On the evidence of the appellant, accepted by the County Ecologist, the proposal would lead to the loss of 1.83 habitat units, or a 98.97% net biodiversity loss. This is clearly significant harm to biodiversity.
25. The Preliminary Ecological Assessment identifies that a biodiversity mitigation and enhancement plan must be created to mitigate habitat loss and provide net gains, and the Biodiversity Net Gain Assessment sets out options to consider in order to deliver net gains.
26. However, there is no evidence that these options have been explored in more detail or that consideration of the guidance in the Planning Practice Guidance (PPG) on the biodiversity gain hierarchy has been followed.
27. Instead, the appellant seeks to agree a contribution to a local authority offsite scheme. However, I do not have any details before me as to whether or not such a scheme exists, is available to the appellant or has the ability or capacity to mitigate the biodiversity harm arising from the proposal.

28. Further, although the appellant has provided Heads of Terms for a planning obligation to provide such a contribution, there is no completed obligation before me. The Procedural Guide: Planning appeals – England is clear that if the appeal is following the written representations procedure, then the appellant must ensure that an executed and certified copy of the planning obligation is submitted at the time of making their appeal. I do not consider that it would be appropriate to impose a condition to seek to address this matter, as I am not satisfied that it would be possible to draft one to properly meet the requirements of the Framework or PPG.
29. As such, I find that the proposal would cause significant harm to biodiversity which would not be avoided, mitigated or compensated for and would therefore conflict with Policy 41 of the Plan and national policy in the Framework.

Construction standards

30. Policy 29 of the Plan requires that development of this type will be required to achieve a minimum BREEAM rating of very good. I accept that this detail has not been demonstrated as part of the planning application. However, there is nothing in the information before me which suggests that the proposal could not meet those standards, with details provided during the building regulations approval stage.
31. As such, subject to the imposition of suitable conditions, which the Council has offered and the appellant accepted, I consider that the construction of the proposal could meet the required standards, and would therefore not conflict with Policy 29 of the Plan.

Conclusion

32. I have found that the proposal would not harm the character and appearance of the area, and that construction of it could, subject to conditions, meet the required standards. However, I have found significant development plan conflict with regard to the need to be certain that the proposal would be financially sound, and the effect of the proposal on biodiversity.
33. As such, the proposal as a whole conflicts with the development plan, and there are no material considerations of such weight to indicate that a decision be taken other than in accordance with the development plan. The appeal should therefore be dismissed.

S Dean

INSPECTOR