

Appeal Decision

Site visit made on 19 August 2024

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Appeal Ref: APP/Y9507/W/24/3347291

The Old Calf Shed, Lippen Lane, Warnford, SO32 3LE

- 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 M Scappaticci against the decision of South Downs National Park Authority.
 - The application Ref is SDNP/23/05074/FUL.
 - The development proposed is demolition of existing buildings and construction of three dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Although not specifically referred to within the Authority's reasons for refusing the planning application, it is clear from the delegated report that it had concern about the proposal's effect on the character and appearance of the area; a concern also raised by interested parties.
3. During the course of the appeal I sought additional information from the main parties and Natural England in respect of the main issue relating to the Solent and Southampton Water Special Protection Area (SPA). The comments received have been taken into consideration in my decision.

Main Issues

4. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether the loss of employment use upon the site has been justified;
 - Whether or not the proposal meets an identified local housing need;

- The effect on protected species and their habitat notably Dormice;
- Whether suitable biodiversity net-gain would be provided;
- The effect on The Solent and Southampton Water SPA with particular regard to waste water and nutrients;
- Whether the location of the appeal site is suitable for the proposal, having regard to the development strategy for the area and the relationship the new houses would have to services and facilities and sustainable transport modes;
- Whether or not the contributions sought towards affordable housing are reasonable and necessary to make the development acceptable, and
- The effect of the proposal on the living conditions of the intended future occupiers with particular regard to outside amenity space.

Reasons

5. The appeal site is located within the countryside for planning policy purposes, within the South Downs National Park. Section 62 of the Environment Act 1995 requires me to have regard to the purposes of the National Park namely, to conserve and enhance the natural beauty, wildlife and cultural heritage of the area and to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public. There is also a duty to seek to foster the economic and social well-being of the local communities within the National Park.

Character and Appearance

6. The appeal site is located on the outskirts of the built up area of Warnford, to the rear of a pair of semi-detached dwellings which front Lippen Lane. The immediate area is agricultural in character with agricultural buildings to the south of the site visible from the road, and agricultural fields lining the road and enveloping the built form of the settlement. The area is spacious in character with the built form set within largely landscaped grounds. Residential development is largely visible from the road, with dwellings having a visual and physical street presence.
7. The new dwellings would be in close proximity to the site boundaries, and their location to the rear of existing residential development and the arrangement of the units upon the site itself would be significantly at odds with the established character and appearance of the area. Moreover, the cul-de-sac arrangement, the building to open space ratio and amount of hardsurfacing would be of a suburban character which would be alien in this rural location. The development would not be landscaped led and

there would be limited opportunities to incorporate meaningful landscaping into the scheme.

8. Given the above, I find that the proposal would be harmful to the character and appearance of the area, in conflict with South Downs Local Plan Adopted 2 July 2019 (2014-33) (SDLP) Strategic Policies SD5 and SD25, which amongst other matters requires development proposals to contribute to local distinctiveness and sense of place and respond to the context of the relevant broad area. There would also be conflict with Purpose 1 of the National Park in so far as it relates to conserving and enhancing the natural beauty and cultural heritage of the area.

Employment Use

9. SDLP Strategic Policy SD35 seeks amongst things to safeguard all existing employment sites and allocations from development proposals for non-employment uses. The policy sets out that change of use applications that would result in the loss of employment land will only be permitted where a robust marketing campaign of at least 12 months clearly demonstrates that there is no market demand for the business premises.
10. Although not an allocation, principal or local employment site, the planning application form indicates that the existing use of site is B1(a) which is an employment use for the purposes of SDLP Strategic Policy SD35.
11. The Appellant has provided evidence from Keygrove Chartered Surveyors dated 24 February 2022 who marketed the site on a number of websites, and through mailing clients on their own database which resulted in 8 requests for marketing details, with no offers received.
12. It is unclear whether the marketing exercise was undertaken for the requisite 12 month period, given that the terms of business were signed and returned on 27 July 2021. However, even if it was, the marketing details fail to market the existing buildings on the site, focussing instead on the offices granted planning permission in December 2021, the development of which has not commenced.
13. On the basis of the above and noting that the Appellant has sought to make the site more attractive through the removal of the condition within the original planning permission, I am not persuaded that a robust marketing exercise has been undertaken. Accordingly, the loss of the employment use is not justified, and the proposal would conflict with the aims of SDLP Strategic Policy SD35. There would also be conflict with the duty to foster the economic and social well-being of the local communities within it.

Housing Need

14. SDLP Strategic Policy SD27 seeks to ensure that development proposals provide a mix of homes that reflect the need and community aspiration for small and medium sized homes. The proposal shows that each of the

dwellings would have three double bedrooms, with each of the plots having a snug and a study in addition to an open plan kitchen, dining and living area.

15. There is dispute over whether the dwellings would have 3 or more bedrooms. In this regard the supporting text to the policy makes it clear that any room in a proposed dwelling that is not a main reception room, kitchen, bathroom or WC, and has dimensions that allow for a single bed will be counted as a bedroom. On this basis, the study in each of the dwellings would be large enough to accommodate a single bed and for the purposes of Strategic Policy SD27 each dwelling should be regarded as a 4 bedroom dwelling.
16. I acknowledge that this would be a small housing site and that it may be difficult to achieve the exact proportions and mix set out within Strategic Policy SD27. However, even if I were persuaded that the dwellings would be small family homes, and that one of the bedrooms could be used as study, in addition to the study that would be provided, I have no evidence to substantiate that the house types proposed would reflect a bespoke local housing need. Table 33 submitted in the Appellant's statement does not convince me otherwise because this shows the estimated size of dwellings needed between 2014 to 2033 for the administrative area of the South Downs National Park, as opposed to a local housing need.
17. Accordingly, on the evidence before me I conclude that the housing mix proposed does not reflect the housing need for the area, in conflict with SDLP Strategic Policy SD27. There would also be conflict with the duty of to foster the economic and social well-being of the local communities within it.

Protected Species

18. An Updated Preliminary Ecological Appraisal¹ (UPEA) by ecosupport identified that 1 record of Hazel Dormice was recorded approximately 150 metres to the south west of the site in a garden hedgerow in 2015.
19. Hazel Dormice are designated and protected as European protected species (EPS), protected under the Conservation of Habitats and Species Regulations 2017. The Natural Environment and Rural Communities Act 2006 identifies dormice as a living organism that is of principal importance for the purposes of conserving biodiversity and s40(1) places a duty on me to have regard to the purposes of conserving and enhancing biodiversity.
20. The redevelopment of the site would involve the removal of the area of scrub to the rear of the larger building on the site which has the potential for suitable Dormouse habitat. Whilst identified as having limited potential, the UPEA states that the removal of this vegetation could result

¹ Dated 06/02/2023

in damage to dormice nests or the species themselves. Given this, an adverse impact at local level to this protected species is identified.

21. The UPEA suggests mitigation through a precautionary approach to vegetation removal by way of a method statement approach. It is suggested that such an approach would ensure that no Dormice would be harmed during the works to remove the bramble scrub.
22. Whilst such mitigation may prevent Dormice from being harmed, there is no mitigation proposed to compensate for the loss of Dormouse habitat within proximity of the removed vegetation. I note the suggestion of native planting on the southern boundary of the site. This boundary is located further away from the line of trees along the northern boundary to which the scrub is proximate to and would be unlikely, as a result of the position of the new houses, gardens and likely boundary treatments allow connectivity to the tree line habitat beyond the northern connecting the wider area.
23. Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development is established before planning permission is granted. I therefore do not consider that it would be appropriate to apply a condition to the grant of any permission requiring a Biodiversity Mitigation and Enhancement Strategy to be submitted (as suggested by the Authority) as there can be no certainty that the mitigation would acceptably address any harm to the protected species.
24. Given my findings, I cannot be satisfied that the proposal would not adversely affect Hazel Dormice which is in conflict with the aims of SDLP Core Policy SD2 in so far as the proposal would not protect and provide more, better and joined up natural habitats. There would also be conflict with the conservation and enhancement of biodiversity objectives of Strategic Policy SD9, as well as with the First Purpose of a National Park and the conserving and enhancing the natural environment objectives of the National Planning Policy Framework (Framework).

Biodiversity Net-gain

25. SDLP Strategic Policy SD9 requires development proposals to identify and incorporate opportunities for net gains in biodiversity, which is consistent with Framework paragraph 180 d). At the time that the planning application was submitted biodiversity net gain was not mandatory.
26. Apart from an area of Bramble scrub, some self-seeded trees and plants and a stretch of hedgerow along the southern boundary of the site, much of the appeal site is covered by buildings and hardsurfacing.
27. Whilst new planting is proposed along the southern boundary with species rich trees, I have no calculations before me to indicate the biodiversity value of the appeal site and how this would be increased. Accordingly, there is no certainty that the proposal would result in a net-gain in

biodiversity, which conflicts with the aims of SDLP Strategic Policy SD9 and the biodiversity aims of the Framework.

The Solent and Southampton Water SPA

28. The appeal site is located within the wider catchment of The Solent and Southampton Water SPA. The River Meon located in a south easterly direction approximately 215 metres from the site (as measured by the Council) drains into The Solent Catchment.
29. The SPA comprises a series of estuaries and harbours with extensive mudflats and saltmarshes, saline lagoons, shingle beaches, reedbeds, damp woodland and grazing marsh. The mudflats have a rich invertebrate fauna that forms the food resource for estuarine birds. Its qualifying features are breeding and overwintering habitats for a significant number of wetland birds. Conservation objectives include maintaining and restoring the extent and distribution of the habitats of the qualifying features and their structure, function and supporting processes as well as the population and distribution of each of the qualifying features.
30. Natural England (NE) has advised that the SPA is in an unfavourable condition due to excessive nutrients resulting in eutrophication, which has an adverse effect on important habitat and bird feeding grounds, thereby affecting the status and distribution of key bird species against the stated conservation objectives of the SPA. The sources of these nutrient inputs are from wastewater from existing housing and agriculture. NE has advised that there is the potential for future housing development, to increase nutrient inputs into the Solent Catchment. It has established that nutrient neutrality is being deployed as mitigation suggesting that its developed Methodology and Calculator is used to ensure this.
31. Under the Conservation of Habitats and Species Regulations 2017 as amended, as the competent authority I am required to carefully consider the nutrients impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.
32. The proposed dwellings are unable to connect to the main sewer network and would be served by their own waste plant on-site (SOLIDO SMART EBL 12 Person). Other than a performance certificate for the proposed plant, limited detail has been provided of this equipment, including nutrient budget calculations, details of maintenance and where the treated water would be disposed.
33. I note the suggestion that the proposed plant is exempt from a nutrient pollution standard under the Levelling-up and Regeneration Act 2023, however my understanding is that such provisions relate to sewage undertakers and waste water treatment plants, as opposed to private treatment plants.

34. Whilst the package treatment plant may be capable of reducing the amount of discharge of nitrates into the SPA, there would be likely to be some increase in nitrogen load arising from the proposal. Moreover the effectiveness of the treatment plant is reliant on ongoing monitoring and maintenance and there is no mechanism before me to secure this.
35. Accordingly, I do not find the appellant's grounds of appeal to provide the necessary persuasive evidence that a private package water treatment plant is exempt from a nutrient pollution standard, or that the proposal would not contribute to the input of nitrates into the SPA either alone or in combination.
36. In reaching this conclusion, I note that the appellant is willing to work with the Authority in achieving nutrient neutrality and had the proposal been acceptable in all other respects this is a matter that I would have pursued with the main parties.
37. In conclusion and applying a precautionary approach, the proposal fails to provide adequate information to demonstrate that there would be no likely significant effects on the integrity of The Solent and Southampton Water SPA. Accordingly, there is conflict with the wildlife objectives of SDLP Core Policy SD1 and the conservation and enhancement of biodiversity and internationally protected sites objectives of Strategic Policy SD9. The first purpose of the National Park relating to natural beauty and wildlife would not be achieved. There is however, no conflict with Strategic Policy SD10 as the appeal site is located outside of the zone of influence of the Solent Coast SPAs.

Location

38. The appeal site comprises 2 single storey buildings covering a large part of the site, with hard surfaced areas around them. The larger building has planning permission for storage and business use and more recently planning permission has been granted for the redevelopment of the site with office buildings.
39. SDLP Strategic Policy SD25 sets out the development strategy for the National Park, supporting development in named settlements, of which Warnford does not feature. West Meon is the closest named settlement to the appeal site with reference being made to it being 1 mile distant. The policy also states that exceptionally development is permitted outside of settlement boundaries where certain criteria is satisfied.
40. There is no dispute that the proposal would comprise the redevelopment of a previously developed site, however in order to comply with the exception set out within SDLP Strategic Policy SD25, development is required to comply with relevant policies of the Local Plan, respond to the broad area or river corridor, and, in the case of previously developed land, comprises an appropriate reuse, which conserves and enhances the special qualities of the National Park.

41. There is no definition of what 'relevant policies' are to be considered within Strategic Policy SD25. The supporting text to the policy however indicates that 'brownfield' development outside settlement boundaries (will be permitted) where demonstrably necessary to meet the wider objectives of this Local Plan'. Figure 2.2 of the SDLP sets out 9 Local Plan Objectives.
42. The provision of new homes would go some way to protect and provide for the social and economic well-being of National Park communities. However, in achieving this, the new homes would be located in an area remote from day to services, and in order to access these, there would be a high reliance on the private motor vehicle, given the local highway conditions, lack of pedestrian facilities and street lighting and the distances involved. No reference is made to a bus service serving the site. For those that did not have access to a private vehicle, the services and facilities in both Warnford and West Meon would not be accessible.
43. As a result, even taking account of the National Planning Policy Framework's advice that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, the appeal site is poorly located in terms of its access to services and facilities by sustainable modes of transport.
44. In reaching this view, I am mindful that the existing use of the buildings and the extant planning permission use would have a high reliance on a private vehicle to access this place/places of employment, including employees and for deliveries. However, it is likely that the number of daily vehicle movements to and from the site would be less than those associated with its proposed residential use where trips to shops, leisure activities, schools, places of employment would be likely each day.
45. In terms of other Local Plan Objectives, my findings above in respect of character and appearance, loss of employment use, size of dwellings proposed, protected species, biodiversity net gain and The Solent and Southampton Water SPA lead the proposal to conflict with the Local Plan Objectives relating to conserving and enhancing the landscapes of the National Park, protecting and providing for the social and economic well being of National Park communities and supporting wildlife.
46. In light of the foregoing, I conclude that the location of the appeal site is not suitable for new housing because of the conflict with the development plan, notably SDLP Strategic Policies SD19, SD25 and the sustainability aims of Core Policy SD1.

Affordable Housing

47. SDLP Strategic Policy SD28 requires that on sites that deliver 3 homes that a meaningful financial contribution is provided towards affordable homes. The Appellant considers that upon application of Vacant Building Credit (VBC) that no financial contribution towards affordable housing is required.

48. Whilst the Authority do not dispute the floorspace calculations provided by the Appellant, it questions his intentions over the use of the existing buildings and the site's re-development. The Appellant is silent on these matters.
49. It seems to me however, that the condition of the buildings on the site could allow them to be reused for employment purposes. I have no substantive evidence before me to demonstrate that the buildings have been abandoned such that VBC cannot be applied.
50. The Planning Practice Guidance makes it clear that VBC is intended to incentivise brownfield development, including the reuse and redevelopment of empty and redundant buildings. It also sets out the contributions sought towards affordable housing should take into account the floor space of the demolished buildings which should be deducted from the overall affordable housing contribution calculation.
51. In this case the Authority has not indicated what the 'meaningful financial contribution' would have been towards affordable housing. Given the site specific circumstances, the support for the development of brownfield sites, and the evidence before me I conclude that the appeal does not fall on the absence of a contribution towards affordable housing, despite the conflict with SDLP Strategic Policy SD28. Material considerations in the form of VBC and the guidance in the PPG in this regard outweigh the development plan conflict in this case.

Living Conditions

52. The new dwellings would be of a size that would be suitable for family occupation and could well be occupied by families with small children. Each dwelling would have a rear garden area with the submitted drawings indicating each would have 100 sqm plus which is disputed by the Authority.
53. The Adopted Design Guide Supplementary Planning Document (SPD) sets out at C.10 that homes with 2 or more bedrooms should usually have a private amenity space of at least 60% of the internal floor space of the house. Whilst plot 1 would comply with the SPD in terms of rear garden area, the Authority has calculated that plots 2 and 3 would fall short providing a rear garden area which would be 55% of the internal floor area.
54. Although on the small side, the garden areas to plots 2 and 3 would, in my judgement, provide sufficient space for an outdoor seating area, washing line, play equipment and space for outdoor storage. Moreover, each outdoor space would be relatively private and given their orientation would receive adequate levels of sunlight and light during the day, even taking account of the trees on the site's boundaries.
55. Accordingly, the living conditions of the intended future occupiers would be acceptable in terms of outside amenity space provision. There would be no conflict with the aims of Strategic Policy SD5 of the SDLP in so far

as it requires high quality outdoor amenity space to be provided that is appropriate to the needs of its occupiers or users.

Planning Balance

56. The proposal would make a contribution, albeit small, to the supply of housing within the National Park going some way to support the Government's objective of significantly boosting the supply of new homes. The redevelopment of brownfield land and the small sized site which could likely be delivered quickly, and the fostering of the economic and social well-being of local communities that would result weigh in favour of the proposal. These matters carry moderate weight given the quantum of development proposed.
57. I note that no concerns have been raised about the design of the new dwellings and they would be constructed to high sustainability standards. Well-designed development should be expected of any proposal and is therefore neutral in my consideration. The inclusion of energy efficient standards throughout the build would be expected of the development plan to a degree and standards over and above policy requirements and the those contained in the Building Regulations attract limited weight in the overall planning balance, given the quantum of development proposed in this case. Compliance with other development requirements in the development plan does not weigh in favour of the proposal.
58. Against these benefits and matters is the harm that would be caused to the character and appearance of the area, the unjustified loss of employment use on the site, the proposal not reflecting local housing need, the harm to protected species, biodiversity and the integrity of The Solent and Southampton Water SPA, and the site not being suitably located for new housing, in conflict with the development plan. In terms of the SPA, it has not been demonstrated that there are no alternatives to the proposal or that there are imperative reasons of overriding public interest why the proposal should proceed. Moreover, adequate compensatory provision has not been secured. These are matters to which I attach significant weight. The conflict that would arise with the purposes of the National Park attract great weight in the overall planning balance.
59. Given the above, the benefits of the scheme do not outweigh the harm that would result and the conflict with the development plan and the National Park purposes. There are no material considerations which indicate a decision other than in accordance with the development plan.

Conclusion

60. For the above reasons and having regard to all other matters raised, the appeal is dismissed.

RC Kirby

INSPECTOR