



Appeal Decision

Site visit made on 28 June 2017

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 July 2017

Appeal Ref: APP/B9506/W/17/3170844

The Barn and Oak Tree Cottage, Hundred Lane, Portmore, Lymington, Hampshire SO41 5RG

- 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 A J Developments Limited against the decision of New Forest National Park Authority.
 - The application Ref 16/00918, dated 23 November 2016, was refused by notice dated 16 February 2017.
 - The development proposed is the demolition of existing residential units and erection of one detached bungalow dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) Whether the proposed development would comply with Policy DP10 of the New Forest National Park Core Strategy and Development Management Policies DPD (the DPD); and
 - (b) The effect of the proposed bungalow on the character and appearance of the area, including on existing trees on the site and in terms of its Conservation Area status.

Reasons

DPD Policy DP10

3. There is no dispute that the appeal site lies outside the four defined New Forest Villages nor that the two existing buildings on the site, The Barn and Oak Tree Cottage, comprise two separate residential units following the grant of a Lawful Use Certificate (CLU) on 29 July 2016¹.
4. Policy DP10a) clearly states that the replacement of existing dwellings will be permitted except where the existing dwelling is the result of an unauthorised use. It is evident that The Barn and Oak Tree Cottage (or 'Oak Trees' as it is referred to in the CLU) were established as the result of a previous unauthorised use. Their proposed replacement would therefore be a direct breach of this Policy.

¹ LPA Ref 16/00469

5. The appellant argues that Policy DP10 does not comply with the National Planning Policy Framework (NPPF) since the DPD pre-dates the NPPF and the policy is punitive. However, I can see nothing in the NPPF that prevents such a policy. I also note that in one of the appeal decisions cited by the Council the Inspector considered that Policy DP11, which applies a similar restriction to extensions as DP10 does to replacement dwellings, "*warrants strong support as it clearly indicates that when breaches of planning control have occurred they will not be rewarded*".²
6. The Council states that the reason for this element of the Policy is so as not to reward (or encourage) and exacerbate inappropriate uses/development in the National Park which would not gain permission as it results in poor planning and compounds residential development in inappropriate locations³. I also note that the Council seeks to retain a stock of smaller dwellings and both the explanatory text (paragraph 7.34 of the DPD) and Policy DP10 itself state that outside the defined villages replacement dwellings should be of no greater floor space than the existing dwelling.
7. In this case the two existing dwellings (one of 45.9m² and the other 50.12m²) would be replaced by one larger bungalow not exceeding 100m², a slightly larger albeit similar floor space. I also acknowledge the appellant's point that the proposal would lead to one less independent dwelling but this would not deliver any 'planning gain' in my view because the proposed floor space is no smaller and would in my view be likely to result in a similar number of people living at the site and driving their vehicles to and from it to nearby services in Lymington and wider afield.
8. Moreover I see nothing wrong in Policy DP10's aim of seeking to prevent anyone benefiting from the result of unauthorised development in the National Park, where such development outside settlement boundaries is rightly restricted. Indeed such a policy appears to mirror similar national policy in respect of Green Belts, another area of general restraint on development. There is no reason why I should not determine the appeal in accordance with the adopted development plan. I consider the other aspects of Policy DP10 below.

Character and Appearance

9. The site lies within the Forest South East Conservation Area (CA). I am required by statute to pay special attention to the desirability of preserving or enhancing the character of the CA⁴.
10. The existing buildings on the site, the two lawful dwellings, are former outbuildings of The Thatched House, a locally listed building to the rear. Whilst not being of any particular architectural merit themselves they are modest in form and have a low key appearance not least because they are to a large extent screened, at least for half the year, by six Ash trees and a gnarled stunted Oak tree on the site's front boundary with the road as well as by mature Oak and Copper Beech trees to the rear and in the centre of the site respectively. In assessing the effect on trees I accept and have taken account of the appellant's revised siting plans⁵.

² APP/B9506/A/11/2162914

³ LPA appeal statement, paragraph 5.4

⁴ S72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

⁵ 8807/100 Rev C and TPP.12.12.16.01 Rev A

11. I acknowledge that the branches of some of the Ash trees require pruning to prevent them interfering with the overhead power or telephone lines. But these trees, despite them not being prime specimens, provide a leafy character to the site frontage, a common characteristic of this part of the Forest and their proposed removal would harm the site's attractive leafy character and appearance. Furthermore the siting of the new bungalow would require the removal of the attractive Copper Beech and the crown reduction of the mature Oak within the site, which would also harm it.
12. The proposed bungalow itself would not be higher than the existing tallest dwelling and would be inset within the site. I also agree with the appellant that it would not adversely impact on the setting of The Thatched House. But its siting would lead to the loss of the attractive Copper Beech, the unnecessary crown reduction of the mature Oak and the proposed removal of the frontage Ash trees. I also agree with the Council's Tree officer that there would be pressure in the future to remove the Oak because of its proximity to the proposed dwelling. These drawbacks of the proposal would fail to preserve the character and appearance of the CA.
13. I acknowledge that the new dwelling would be thermally more efficient but such a benefit would not outweigh the harm to the character and appearance of the CA as outlined above.
14. Policy DP10 also requires replacement dwellings to make a positive contribution to the historic character and appearance of the locality. For the above reasons the proposed development would fail to do so. DPP Policies CP2, DP1, DP6, DP10b) and CP8 together seek to preserve local distinctiveness including natural features such as trees and for the above reasons the proposed development would be contrary to these Policies.

Conclusion

15. For the reasons given above I conclude that the appeal should be dismissed.

Nick Fagan

INSPECTOR