
Appeal Decision

Hearing held on 27 July 2016

Site visit made on 27 July 2016

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 19 August 2016

Appeal Ref: APP/B9506/W/16/3145590

**New Forest Activity Centre, Rhinefield Road, Brockenhurst, Hampshire
SO42 7QE**

- 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 Paul Girling against the decision of New Forest National Park Authority.
 - The application Ref 15/00580, dated 22 July 2015, was refused by notice dated 21 October 2015.
 - The development proposed is two dwellings with associated basements, garages and stable blocks; waste water treatment plants (demolition of existing buildings and removal of bund).
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Decision

1. The appeal is dismissed.

Procedural matter

2. Since the application was determined, the appellant has submitted an executed Section 106 planning obligation by way of a Unilateral Undertaking (UU), which provides for a financial contribution towards habitat mitigation measures. Although the New Forest National Park Authority (the Authority) indicated that the UU substantively addresses its third reason for refusal, there was nevertheless some discussion at the hearing relating to the provision of an affordable housing contribution.
3. However, Planning Practice Guidance (PPG) has been amended in respect of affordable housing and tariff-style contributions. This followed a Court of Appeal judgment of 11 May 2016, wherein the Secretary of State for Communities and Local Government successfully appealed against the judgment of the High Court of 31 July 2015, on a joint application of the two Councils in seeking to challenge the Secretary of State's Written Ministerial Statement (WMS) of 28 November 2014, and his subsequent alterations to the PPG on planning obligations for affordable housing and social infrastructure contributions.
4. Both the WMS and PPG¹ are clear on the circumstances where infrastructure contributions should not be sought through planning obligations from developers. Although PPG sets out that local planning authorities may apply a lower threshold of 5 units or less within rural areas (including National Parks),

¹ Paragraph: 031 reference ID: 23b-031-20160519

it is clear that affordable housing and tariff-style contributions should not be sought below this threshold.

Main Issues

5. The main issues in this appeal are:

- whether the proposal would be an acceptable form of development in this location with due regard to the development plan and any other material considerations; and
- whether it would set an undesirable precedent for similar development in the New Forest National Park (NP).

Reasons

Development plan and material considerations

6. The appeal site lies to the north of Rhinefield Road beyond a metalled access track and is occupied by two substantial main buildings; one of which provides a number of horse loose boxes and an indoor riding arena with tiered seating and an upper floor area. The other building is an open sided barn that has had a number of horse stables constructed within it. Outside, there are areas of hardstanding, including a yard area and an outdoor manège, the latter lying immediately beyond the northern side of the large earth bund proposed for removal as part of the proposal. A large part of the residential area of Brockenhurst lies to the south of Rhinefield Road with the main village centre further to the south east.
7. Policy CP11 of the Authority's Core Strategy and Development Management Policies DPD (2010) (the CS) is primarily a policy for affordable housing provision requiring this to form 50% of residential development on sites within or adjacent to the four defined villages, including Brockenhurst. However, the policy also provides for affordable housing on exceptions sites within or adjacent to villages within the NP more generally, where appropriate. Notably, the policy requires developments of single dwellings to provide a financial contribution in lieu of on-site affordable housing provision.
8. CS Policy CP12 provides the key spatial policy for directing development to certain locations in order to maintain the vitality of local communities and to support local services. The policy requires development to be within the defined village boundaries unless it would meet certain exceptions. The proposal would not accord with any of these. The above policies therefore broadly accord with the aims of the National Planning Policy Framework (the Framework) in respect of the location of housing and the protection of the open countryside.
9. The appeal site is separated from the Brockenhurst village boundary by a substantial tree belt and a field and has no clear physical relationship to the main built-up area. I do not therefore, consider it to be adjacent to the village boundary. Furthermore, even if I were to accept otherwise, the 50% affordable housing requirements of CS Policy CP11 would not be met as the proposal is for two open market dwellings.
10. For the above reasons, the proposal runs counter to CS Policies CP11 and CP12. The appellant accepts this and does not disagree that the development

plan (in this case, the CS) is the starting point for my decision. However, he seeks to justify the proposal based on the premise that it would have lesser effects on the local area than the fallback position created by the site's current lawful use. The appellant therefore submits that this and the site's overall geographical relationship to Brockenhurst, outweigh the provisions of the development plan.

11. The site has a Certificate of Lawfulness for D2 use, granted in 2006, and the appellant argues that this would allow for a number of large events to take place that the Authority would have no control over. This matter forms a key strand of the appellant's case, which is that the appeal scheme would be a more suitable alternative to the D2 use by removing the potential disruption to local residents and the environment likely to be associated with frequent, large events. I heard a number of arguments very eloquently put to me by local residents, many of whom, although not all, are in favour of the proposed development for this very reason. Brockenhurst Parish Council has also given qualified support to the proposal.
12. The Certificate of Lawfulness covers the whole of the site, but it is clear that this does not permit an increase in equestrian use without the need to apply for the relevant licence. I note that the current licence is in the process of being varied to allow for an increase from 21 to 25 horses. However, notwithstanding this, I recognise that other events falling within D2 use can take place with less restriction than was previously the case due to changes in licencing requirements.
13. At my site visit, I observed that there was a significant amount of equine-based activity associated with an enterprise run by Burley Manor Stables (now known as Brockenhurst Stables). Indeed, at the site entrance I saw an advertising board promoting this, albeit under the former name. Nevertheless, although the appellant has offered support to Brockenhurst Stables, he argues that the business occupies only a small part of the site, including its buildings and that it does not therefore offer the potential for a satisfactory long-term financial return.
14. It was apparent from what I observed on site that the riding arena and seating area within the larger of the two buildings was not being utilised, which gives some credence to the appellant's assertion. Moreover, although it has not been made clear to me whether the owner of Brockenhurst Stables wishes to make use of the indoor riding arena, from what I have seen, I am of the view that the nature of the business as a more low-key, mainly trekking enterprise, is such that this would unlikely be the case.
15. The appellant therefore submits that should the proposal not receive permission, his intention is to seek a financial return from the site based on an alternative D2 use that would make full use of the site. However, the Authority has drawn my attention to an appeal decision² dating from 2007 relating to a previous proposal by the appellant's company (Heathgate Land and Property Ltd) wherein the Inspector concluded that there was a high probability that the fallback position of an alternative D2 use would be pursued. However, time has moved on considerably – almost nine years, without this coming to fruition. No firm evidence, such as a business plan or letters of intent from events

² Ref APP/B9506/A/07/2033186

- providers has been submitted to demonstrate conclusively that an alternative D2 use will be pursued.
16. Furthermore, whilst the existing buildings appear sufficient for the site's current use as a horse riding centre, and there is a significant amount of land that would accommodate car parking, given the general condition of the outdoor areas, I am not convinced that the facilities would necessarily be suitable for other D2 uses aimed at attracting a much higher number of people, without significant further investment. That the appellant is seeking a financial return without significant further outlay, suggests to me a general reluctance to invest additional funds in the site.
 17. Notwithstanding the above, even if I were to accept that there is a real possibility of the fallback position being pursued, this does not necessarily mean that any resulting harm to the local environment or nearby residential occupiers would be so severe that it would warrant granting permission for a development that would clearly be in conflict with the development plan's objectives for the location of housing.
 18. Therefore, based on the evidence before me, I place substantial weight on the Authority's argument that the fallback use is unlikely to happen and attach only moderate weight to the appellant's submissions relating to the fallback position as a material consideration. I now turn to other material considerations.
 19. Paragraph 55 of the Framework seeks to promote sustainable development in rural areas and sets out that new isolated homes in the countryside should be avoided unless there are special circumstances. The proposal would not fall within any of the special circumstances set out. Nevertheless, the appellant submits that the proximity of the site to Brockenhurst places it in a sustainable location.
 20. Whilst the appeal site lies close to the Brockenhurst village boundary, it is about 1km from the village centre that contains the day-to-day services and facilities likely to be relied upon by the occupiers of the proposed dwellings. Further, for much of the distance, there are no surfaced footpaths leading from the site to the village centre. Whilst the informal roadside pedestrian routes could, in theory, allow for occupiers of the proposed dwellings to access the village centre on foot, the variation in condition of the surface at different times of the year would be likely to discourage their use as a practical alternative to private motorised transport.
 21. The development of two large family dwellings would therefore be likely to generate a significant number of trips by car to access services and facilities in the village and/or further afield, particularly after dark or during periods of inclement weather. For these reasons, I consider that the site occupies a relatively isolated location.
 22. I recognise that Framework paragraph 55 allows for development that would *significantly enhance its immediate setting*. However, this is firstly dependant on the dwellings being of *exceptional quality* or through the *innovative nature of their design*. I am not persuaded, on the evidence before me, that this would be the case. Thus, the proposal would run counter to the Framework.
 23. The number of equine-based businesses operating within the NP has decreased significantly since the late 1970s, which the Authority attributes to the

restrictive provisions of the previous local plan. Moreover, the Authority put to me that it is becoming difficult to provide new facilities for stabling within the NP.

24. Given the attractiveness of the area and the potential for equine-based tourism, the loss of the appeal site for horse stabling and trekking activities would have a further diminishing effect on the land-based rural economy of the NP, which the CS seeks to avoid.

Precedent

25. I have considered the Authority's argument that the current proposal would set a precedent for similar developments on other equestrian sites within the NP. Whilst each application and appeal must be treated on its individual merits, I can appreciate the Authority's concern that approval of this proposal could be used in support of residential schemes elsewhere within the area and I have no reason to doubt that there is significant pressure for housing development within the NP. I consider that this is not a generalised fear of precedent, but a realistic and specific concern given the number of equestrian sites in the NP and the pressure for housing development.
26. At the hearing, the appellant provided me with a list of other such sites along with brief comments on their comparability to the appeal site. I accept that the appeal site is generally a larger facility and the size and facilities on the other sites do not compare easily with it. However, it is nonetheless likely that the owners of other equestrian sites would see a residential development on the appeal site as being of significant interest in terms of an alternative use with a potentially high financial return. Thus, allowing this appeal would make it more difficult to resist further planning applications for similar developments, and I consider that their cumulative effect would exacerbate the harm described above to the overall character and land-based rural economy of the NP. Moreover, granting permission for the appeal scheme could result in ad-hoc developments springing up across the NP, thus undermining the Authority's development strategy for the area.

Planning balance and conclusion on the main issues

27. I accept that, to allow the proposal could, in theory, prevent events likely to generate more noise and significant amounts of traffic onto a site that is within a tranquil area of the NP. Whilst this is a material consideration and carries some weight, the evidence before me does not conclusively demonstrate that this should override the statutory status of the development plan's policies that seek to control the location of housing as part of protecting the character and economy of the NP and which must form the starting point for my decision. Moreover, the proposal would not accord with the statutory requirements relating to conserving and enhancing the NP. I have also found that the proposal would run counter to national policy.

Other matters

Local support

28. I have had regard to the evidence submitted at the hearing by local residents and Brockenhurst Parish Council (BPC) along with the written evidence submitted both at application and appeal stage. However, no planning

arguments have been raised that are substantive enough to lead me to a different conclusion on the main issues.

29. With particular regard to BPC's comments, I note that support for the scheme is subject to the proposal meeting a number of conditions. Whilst some of these could be addressed by means of suitably worded planning conditions, were I minded to allow the appeal, these cannot be used to prevent other applications being made for further development on the site or to restrict the period within which to complete the development.

Previously developed land (pdl)

30. I note the dispute between the parties about whether or not the site comprises pdl. Even if I were to accept that the site is pdl, when judged against the spatial provisions of CS Policies CP11 and CP12 (which do not refer to pdl) and the overall effects on the NP's character and land-based economy, this would not weigh in favour of the proposal such that it altered my decision.
31. I have had regard to the Inspector's decision³ relating to a proposal in Shawforth (referred to by the parties in the appeal before me as 'the Rossendale case'). However, given that the Inspector was dealing with a proposal for development in the Green Belt, although she was required to address the matter of pdl, it is unclear how this has any bearing on this appeal, which is for a proposal in an area with an entirely different planning status. Accordingly, the weight I give the other appeal decision is therefore very limited.
32. I note the appellant's comments that the Housing and Planning Act 2016 could be a determinant in establishing the principle of development on pdl. However, no such regulations are currently in force and there is no clear indication that such development would not be restricted in NPs, given that they have the highest status of protection. Consequently, I cannot apportion any meaningful weight to the appellant's argument in this respect.

Internationally and nationally designated sites

33. The appeal site lies adjacent to the New Forest Site of Special Scientific Interest, which is a Special Protection Area and Special Area of Conservation and also a Ramsar site. Consequently, I must have regard to any proposal that could have an impact on such sites. However, whilst a planning obligation has been provided, as I am dismissing the appeal for other substantive reasons, I do not need to consider this matter further.

Overall conclusion

34. For the above reasons and having had regard to all other matters raised, the appeal does not succeed.

Hayden Baugh-Jones

Inspector

³ Ref APP/B2355/A/13/2194105

APPEARANCES

FOR THE APPELLANT:

Jerry Davies Jerry Davies Planning Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

D Slade MA(Oxon) MSc MRTPI New Forest National Park Authority

Steve Avery New Forest National Park Authority

INTERESTED PERSONS:

Thorold Masefield Local resident

Russell Horne Local resident

Valerie Luke Local resident

John Luke Local resident

Sally Ann Marshall Local resident

Elizabeth Smith Local resident

Christopher Smith Local resident

Anita Whittle Clerk to Brockenhurst Parish Council

Michael Harris Local resident

Councillor Maureen Holding New Forest District Council

Peter Ball Local resident

A. Woodhouse Local resident

P J Dawkins Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Planning application dated 17 September 1991 relating to Black Knoll House
- 2 Letters between Mr A Girling and New Forest District Council dating respectively from October and November 2002
- 3 Statement on behalf of Brockenhurst Parish Council dated 27 July 2016
- 4 Summary of the appellant's comments in respect of equestrian sites identified by the local planning authority
- 5 Written versions of the statements given by Thorold Masefield with an accompanying extract from the officer's report
- 6 Comments from the Employment and Tourism manager at New Forest District Council
- 7 Additional copies of the hearing notifications