

Appeal Decision

Site visit made on 4 December 2018

by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th December 2018

Appeal Ref: APP/B9506/W/18/3209584

Land rear of Primrose Cottage, Cuckoo Hill, South Gorley SP6 2PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr J Barrell against the decision of the New Forest National Park Authority.
 - The application Ref 18/00307, dated 12 April 2018, was refused by notice dated 25 June 2018.
 - The application sought planning permission for (1) the continued use for log storage, log cutting and mulch storage and (2) the erection of a garage to house agricultural machinery without complying with conditions attached to planning permission Ref 00041215 (appeal Ref: APP/B1740/A/89/131065/P7), dated 8 March 1990.
 - The conditions in dispute are Nos 1 and 2 which states that:
 - (1) The uses hereby permitted shall be carried on only by Mr J Barrell and should be for a limited period during which the site is occupied by Mr J Barrell.
 - (2) When the site ceases to be occupied by Mr J Barrell the uses hereby permitted shall cease and all materials and equipment brought on to the site in connection with the uses shall be removed.
 - The reason given for the conditions is: Permission is being granted having particular regard to the circumstances of the appellant and the use he makes of the site.
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Decision

1. The appeal is allowed and planning permission is granted for the use of the land for log storage, log cutting and mulch storage at Land rear of Primrose Cottage, Cuckoo Hill, South Gorley SP6 2PP without compliance with conditions numbers 1 and 2 previously imposed on planning permission Ref 00041215 (appeal Ref: APP/B1740/A/89/131065/P7), dated 8 March 1990, but subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr J Barrell against the New Forest National Park Authority. This application is the subject of a separate decision.

Procedural matter

3. The original application sought permission for the use of the site and the erection of a building. Planning permission was granted at appeal and the Inspector noted that the local planning authority had reached the view that the building was permitted development. The Inspector found no reason to disagree and therefore his decision focused solely on the use. The wording of his formal decision made no reference to the building. I have used similar

wording in my formal decision, although I have removed the word 'continued' as this is not an act of development in itself.

Background and main issues

4. Planning permission Ref 00041215 ('the original permission') granted consent, at appeal, for log storage, log cutting and mulch storage. The first condition made the permission personal to the appellant. The second condition is complementary to this as it seeks to ensure that any materials and equipment brought onto the site be removed when the appellant's use of the site ceases. The appellant wishes to have the first condition removed so that any person(s) could carry out the use and, if that were the case, logically the second condition would no longer serve its intended purpose.
5. The main issue is whether conditions 1 and 2 are necessary and reasonable to ensure the activities at the site do not intensify to result in unacceptable impacts with regard to the character and appearance of the area and the living conditions of the occupiers of neighbouring houses.

Reasons

6. The original permission is subject to 7 conditions. Numbers 3-7 all put controls in place that limit the use of the site, for example by controlling the hours of operation and restricting the number of occasions on which certain noisy activities can take place. These controls would prevent the use of the site causing an unacceptable effect on the living conditions of the occupiers of neighbouring houses.
7. The National Planning Policy Framework is clear that conditions should only be imposed where they meet a number of tests including that they are necessary. The Planning Practice Guidance advises that it is rarely appropriate to limit the benefit of planning permission to a particular person or group of people. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission¹. There are no planning grounds which indicate that the appellant should benefit from a permission that otherwise would not be granted. While the personal circumstances formed part of the reason the original permission was given, it is necessary to consider whether the conditions remain relevant in light of current policy and guidance.
8. How an individual chooses to carry out their business operations could change overtime. Therefore, restricting the use of a site to a named person would not aid in avoiding an intensification of the working practices. This being the case, the first condition does not serve to prevent intensification and so it is not necessary. It must follow that the second condition would also not be necessary.
9. I conclude that conditions 1 and 2 are not necessary or reasonable to ensure the activities at the site do not intensify to result in unacceptable impacts with regard to the character and appearance of the area and the living conditions of the occupiers of neighbouring houses.

¹ Planning Practice Guidance reference ID: 21a-015-20140306.

10. Consequently, I conclude that the proposal would accord with Policies DP1, DP17 and CP8 of the adopted New Forest National Park Core Strategy and Development Management Policies DPD (December 2010). Together, these require that development is appropriate and sympathetic in terms of its scale, that amenity is not adversely affected in terms of additional impacts, and seek to resist development which would erode the Park's local character or would materially increase the level of activity on a site.

Conditions

11. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat relevant conditions from the original planning permission unless they have already been discharged. None of the conditions required the submission of further information and so they did not need to be discharged.
12. The first 4 conditions are necessary to ensure the use does not result in unreasonable diminishing of the living conditions of neighbouring residents. The final condition is necessary to avoid any unacceptable increase in the use of the access track. A condition, which would require the site to only be occupied as a single unit and to prevent it being occupied by more than one business, has been suggested. The conditions on the original permission, which I will re-impose on this permission, will control the hours of operation as well as the regularity at which a number of specific activities could take place. Any and all users of the site would be required to comply with these limitations. Preventing the site being used by multiple businesses would not serve to limit the effect of the use. This would be adequately controlled by the other conditions.

K Taylor

INSPECTOR

Schedule of conditions

1. The permission hereby granted shall relate to the use of the site for log storage, log cutting and mulch storage and for no other purpose.
2. No machinery shall be used on site in connection with the log storage, log cutting and mulch storage hereby permitted, except between the hours of 08:00 and 18:00 Mondays to Fridays and 09:00 and 13:00 hours on Saturdays and not at all on Sundays or Bank Holidays.
3. Within the permitted hours of operation in condition 2 above, the use of wood cutting machinery, including hand-held chainsaws, shall be limited to no more than 1 working day per week and the use of major tree sawing equipment to no more than 5 days per year.
4. No burning of material shall take place on site except between the hours of 08:00 and 18:00 Mondays to Fridays and not at all on Saturdays, Sundays and Bank Holidays.
5. No retail sales, in connection with the use hereby permitted, shall take place from the site.