



Appeal Decision

Site visit made on 26 June 2019

by **Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 03 July 2019

Appeal Ref: APP/B9506/W/19/3222660

Land rear of 213 and 219 Lyndhurst Road, Ashurst SO40 7AA

- 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 P Harding against the decision of New Forest National Park Authority.
 - The application Ref 18/00902, dated 29 October 2018, was refused by notice dated 15 January 2019.
 - The development proposed is change of use to parking area with 2 electric vehicle charge points, cycle store and cycle hire facility.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address above is taken from the planning application form and was also used by the Authority. Insofar as it contains the phrase, 'land rear of', it is imprecise. This is because Nos 213 and 219 are constructed back-to-back with 215 and 217 Lyndhurst Road respectively, and as such they face towards rather than back onto it. This is indeed shown on plan C18/030.01 Rev.A. I have therefore taken this into account in my reasons below.
3. The Authority determined the planning application with reference to policies within the Core Strategy and Development Management Policies DPD 2010 (the DPD). Work on the emerging New Forest National Park Local Plan 2016-2036 (the NFLP) is now well advanced and undergoing examination. In accordance with paragraph 48 of the National Planning Policy Framework (the Framework) weight may be given to emerging policies subject to the extent of unresolved objections, and in this regard policy modifications have been made. I have therefore attached moderate weight to emerging policies within the NFLP and taken them into account in my reasons below.

Main Issues

4. The main issues are:
 - the effect of the development on protected species;
 - the effect of the development on highways safety;
 - the effect of the development on the living conditions of occupants at 213 and 219 Lyndhurst Road with particular regard to noise and disturbance; and

- whether the site is a suitable location for the development in respect of its effect on the character and appearance of the area, including the New Forest National Park (the National Park).

Reasons

Protected species

5. An ecological survey of the site (the Ecology Survey) was submitted with the planning application. This identified the presence of a low population of slow worms and lizards. Though the type of lizard was not specified, the Ecology Survey otherwise indicates that common lizards have been recorded in the surrounding area. Both slow worms and common lizards are protected species under the Wildlife and Countryside Act 1981 (as amended).
6. As part 1.1 of the Ecology Survey however states that it is valid for a period of 24 months, it is now roughly 3 years out-of-date. It was also prepared in relation to a different scheme of development, whose impact would not necessarily have been the same as that now proposed. Furthermore, though the requirement for a full reptile mitigation strategy is identified in the Ecology Survey, none has been placed before me.
7. Despite the lack of up-to-date information, and clearance of some vegetation on the site, there remains good reason to believe that it is currently being used by at least 2 protected species. The exact level of current use, the nature of the development's likely impact, and scope for mitigation are however all unknown.
8. I note the suggestion that this matter could be addressed by the imposition of a condition. Circular 6/2005 however makes clear that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by a proposed development, is established before planning permission is granted. Thus, conditions requiring survey work should only be used in exceptional circumstances. No evidence has been presented to demonstrate that any exceptional circumstances exist in this case.
9. The appellant draws attention to the fact that no comments were received from the Authority's ecology advisor during the determination of the planning application, and that information could have been requested. Whilst it is not the purpose of this appeal to consider the way in which the Authority handled the application, whether or not, and exactly when comments were received in this instance has little bearing on the facts outlined above.
10. I conclude therefore that it has not been demonstrated that the development could be undertaken without causing unacceptable harm to protected species. It would therefore conflict with Policy CP2 of the DPD and emerging Policy SP6 of the NFLP, which amongst other things seek to protect species of biodiversity importance.

Highways

11. The proposed use of the site would generate a major increase in the movement of motor vehicles, cycles and pedestrians through the existing junction with the A35, whose classification indicates that it carries a reasonably high level of traffic.

12. A transport assessment, (the Transport Statement), was submitted with the planning application. This was however undertaken with regard to the then proposed use of the site for holiday chalets. Vehicle movements generated by such a use would be relatively small in number, and by no means comparable to the level of movements likely to be generated by the proposed use. Furthermore, given that it is close to being 5 years old, the Transport Statement is not based on recent statistics, including records of accidents.
13. The parties dispute whether or not officers requested further information whilst the application was being determined. Whilst I note that the need was in fact clearly identified by the Highways Authority, it is again not the purpose of this appeal to consider the way in which the Authority handled the application.
14. I have had regard to paragraph 109 of the National Planning Policy Framework (the Framework), which states that development should only be refused on highway safety grounds if there would be an unacceptable impact on highway safety. In this case the likely impact is unknown, and safe access to and from the site to the A35 cannot therefore be ensured. A reasonable risk of unacceptable harm therefore exists.
15. This matter could not be addressed by condition requiring submission of updated information. This is because such information would post-date an approval, whereas such information is necessary to inform whether approval itself is appropriate.
16. I conclude therefore that it has not been demonstrated that the development could be undertaken without having an unacceptable impact on highway safety. It would therefore conflict with the objective set out in Policy CP19 of the DPD and emerging Policy SP55 of the NFLP, to promote safe access.

Living conditions

17. As Nos 213 and 219 directly back onto Nos 215 and 217, the majority of their windows face directly towards the site. Only a narrow strip of garden space separates the 2 dwellings from the site boundary. As the site does not appear to be in any active use at present, it does not currently represent a source of noise or disturbance for occupants of either No 213 or 219.
18. The proposed development would see a significant intensification in the use of the site, and the use itself would be intensive. Noise would be generated by the comings, goings and manoeuvring of motor vehicles within the car park, which could be persistent throughout the day, and potentially through the night, all year round.
19. The development would therefore have the potential to cause disturbance to the occupants of Nos 213 and 219. These effects would be amplified by the provision of a row of parking spaces and a cycle store adjacent to the garden boundary. Though a hedgerow would be planted along this boundary, this would provide very limited buffering on account of the close proximity of the 2 dwellings to it. Insufficient space otherwise appears to be available to improve this buffer, particularly adjacent to No 213.
20. Both Nos 213 and 219 are exposed to background road noise from the A35, and noise from passing trains. No 219 also stands reasonably close to the existing car park, and is therefore additionally subject to noise generated by its use. Train noise is however intermittent, and both this and the noise generated

by the existing car park and A35 are less immediate than would be those generated within the proposed car park. The impact would be greatest with regard to No 213.

21. I note reference to the Authority's assessment of a scheme to position 2 storage containers supporting a cycle hire use in the existing car park. However this is not directly comparable to the appeal scheme, as it did not involve laying out a new car park or provision of facilities on the site.
22. For the reasons outlined above I conclude that the development would have an unacceptably adverse impact on the living conditions of occupants at Nos 213 and 219. It would therefore conflict with Policy DP1 of the DPD, which amongst other things seeks to ensure that development does not adversely affect amenity, or cause adverse effects through pollution; and emerging Policy DP2 of the NPLP which is similarly worded.

Character and appearance

23. The site lies outside the defined settlement boundary of Ashurst, therefore the development would be contrary to Policy CP9 of the DPD which seeks to support development within the 'defined villages'. Paragraph 84 of the Framework nonetheless indicates that decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements. Paragraph 83(c) of the Framework additionally lends support for rural tourism. In each regard the importance of ensuring that development is sensitive to its surroundings is noted amongst other considerations.
24. The development would serve the local tourist economy and business and community needs insofar as these relate to improved provision of parking and other facilities at the railway station. In this context the Authority's specific concern is the impact that the development would have on the National Park. I have therefore had regard to the purposes of the National Park designation, and advice in paragraph 172 of the Framework to give great weight to the conservation and enhancement of landscape and scenic beauty within National Parks.
25. The site occupies a space which is largely defined by existing development. Its primary visual and spatial association is with land currently laid out as the railway station car park, Nos 213 and 219, and the small cluster of development adjacent to the railway station, of which they form part. Though the site is included within Landscape Character Area 27 (LCA27) of the New Forest Landscape Character Assessment 2015, 'ancient and ornamental woodland', it currently appears as vacant wasteland, and its last use was as a coal yard. Some trees and shrubs are located along the boundary with the adjacent station platform, but these are of very mixed quality. Other trees to the north east appear to be growing within the grounds of an adjacent dwelling.
26. The railway line otherwise forms a strong and distinct edge which separates development around the station, and the site itself, from the landscape to the east. This sense of physical and visual distinction is reinforced by the raised line of the station platform, which largely obscures low level views into the site from the footpath on the opposite side of the railway line, and a number of fences. These notably include a high mesh and barbed wire fence between the

footpath and open space beyond. Whilst the site does not therefore lie directly adjacent to the forest, and does not contain ancient and ornamental woodland, it otherwise makes no significant contribution to the landscape character of the National Park more generally.

27. The Authority has drawn attention to a previous appeal relating to the site, reference APP/B9506/W/15/3133827, in which the Inspector commented on views from the footpath along the opposite side of the railway line, and the open and spacious character of the rural edge location. The development in question was however different to that now proposed given that it involved the construction of chalets, and the erection of a 3 metre high acoustic fence along the boundary with the railway. As such the visual impacts are not comparable. Indeed, particularly with addition of boundary planting, the proposed use of the site would be well contained and not clearly perceived from the footpath, or space beyond. Thus there would be little or no sense from these perspectives that the openness of the rural edge had been diminished, or of any increased urbanisation or suburbanisation of the landscape.
28. In near views the current derelict appearance of the site detracts from its setting. Whilst the development would involve the introduction of a large area of hard surfacing in addition to that already serving the existing car park, it would nonetheless be well related to this car park, and careful specification of surfacing materials and landscaping could help to break up its appearance. The proposed structures would be generally modest in their appearance. As such the development would not harm the immediate setting of the site.
29. Insofar as the decision notice includes reference to tranquillity, the site is not in a tranquil location. This is particularly on account of background noise from the A35, in addition to noise generated by trains and adjacent uses. Notwithstanding the adverse impact likely to arise with regard to occupants of Nos 213 and 219, increased levels of noise generated by the proposed development would not therefore be likely to have a significant effect on the broader noise environment of the area.
30. Some concern has been expressed with regard to lighting, and trees along the boundary with the adjacent platform. Some of these trees grow at higher level than the area within which parking spaces would be formed, and many are clearly in poor condition. I am therefore satisfied that measures to safeguard the health and well being of trees worthy of retention could be secured by condition, together with details of additional landscaping. The specification of lighting could also be addressed by condition.
31. Exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, I conclude that whilst the development would conflict with Policy CP9 of the DPD, it would make a positive contribution to the rural economy, without causing any harm to the character or appearance of the area, including the National Park. This would be consistent with advice in the Framework, and Policies DP1 and CP8 of the DPD, and emerging Policies SP7 and SP17 of the NPLP which each seek to protect the character of the National Park. Therefore, I further conclude that with specific regard to these considerations, the location of the proposed development would be appropriate.

Other Matters

32. The parties dispute whether or not the past use of the site as a coal yard could be resumed. Active use as a coal yard indeed appears to have ceased a long time ago. I note the various case law and appeals cited by the appellant. But even if I was to accept the appellant's view, no evidence has been set before me which shows that resumption in use of the site as a coal yard would be likely in the event that the appeal was dismissed. In view of the fact that coal is no longer in high demand, resumption of such a use is somewhat improbable. As such, and in the further absence of any comparative impact analysis which demonstrates that use as a coal yard would be less favourable than the development proposed, this matter has not altered my view of the planning merits of the appeal.
33. I note the appellant's additional points that the development would make more efficient use of the land, and acknowledge the broader economic benefits of the development in terms of providing parking at the railway station, and adding to the local tourist economy. These points do not however outweigh the harm that would or could arise with regard to protected species, highways safety, or the living conditions of occupants within adjacent dwellings.

Conclusion

34. Whilst I have found that the location of the development would be acceptable with regard to its impact on the character and appearance of the area, including the National Park, it would nonetheless have an unacceptably adverse impact on the living conditions of occupants at Nos 213 and 219. Additionally, unacceptable adverse effects on protected species and highways safety cannot be ruled out. Therefore, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR