



## Appeal Decision

Site visit made on 30 October 2019

**by S Edwards MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 December 2019**

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**Appeal Ref: APP/B9506/W/19/3232567**

**Hazelmere, Southampton Road, Cadnam SO40 2NB**

- 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 Primegold Estates Ltd against the decision of New Forest National Park Authority.
  - The application Ref 18/00781, dated 13 September 2018, was refused by notice dated 1 April 2019.
  - The development proposed is creation of 6 semi-detached dwellings with associated landscaping and parking.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. In August 2019, the New Forest National Park Local Plan 2016-2036 (LP) was adopted by the Authority. This document replaces the policies contained within the New Forest Local Plan Core Strategy and Development Management Policies DPD (December 2010). Accordingly, I shall determine the appeal in accordance with the most up-to-date policies, on which the parties have had the opportunity to comment during the course of the appeal.

### Main Issues

3. The main issues are:
  - Whether the proposal would be suitably located, having regard to the requirements of planning policies seeking to manage the location of residential development;
  - The effect of the proposal on the character and appearance of the area and the wider landscape of the National Park;
  - The effect of the proposal on protected trees;
  - The effect of the proposal on highway safety; and
  - The effect of the development on protected species.

### Reasons

#### *Location*

4. LP Policy SP4 sets out the spatial strategy for the New Forest National Park (NP), and seeks to direct development to the villages of Ashurst, Brockenhurst,

Lyndhurst and Sway, which benefit from defined settlement boundaries, as well as land use allocations made in other parts of the NP. Whilst the appeal site lies within Cadnam and can be described as previously developed land, it nevertheless sits outside of the Defined Villages settlement boundaries and is therefore, for planning policy purposes, located within the open countryside.

5. In accordance with Policy SP4, development proposals outside of the Defined Villages settlement boundaries will only be permitted in specific circumstances. These include the development of rural exception sites or employment sites, the appropriate reuse or redevelopment of existing building(s) but also proposals which require a countryside location or meet the specific locational needs for commoners, Estate Workers or agricultural dwellings.
6. Policy SP4 is complemented by LP Policy SP19, which lists the criteria applying to new residential development in the NP. The Authority's submissions explain that Hazelmere was previously considered as part of the Authority's 'Call for Brownfield Sites', but was not included within the specific site allocations, by reason of the site's proximity to the New Forest Special Protection Area (SPA), the limited services available within the locality and concerns in respect of the access from Southampton Road (the A336).
7. As part of my site visit, I observed that the site is notably located within proximity to a small convenience shop, a pharmacy and a school. Nevertheless, for convenience purposes, there is a greater likelihood that for the large majority of trips, residents would rely on private motor vehicles to meet most of their day to day needs, even allowing for the possibility of some journeys by bus or on foot. The appeal site would therefore not be adequately located in relation to services and facilities.
8. The appellant considers that the principle of additional residential development within the NP has already been established, following the decision to grant planning permission for the scheme which has been constructed on the adjacent site<sup>1</sup>. Whilst I have not been provided with the full details that led to this particular scheme being accepted, it is my understanding that it was approved prior to the designation of the NP and in the context of different planning policies at national and local levels. For these reasons, very limited weight can therefore be afforded to this approval.
9. The proposal would result in the creation of 6 semi-detached dwellings outside the defined villages settlement boundaries, which would not accord with the requirements of LP Policies SP4 and SP19. I note the appellant's comments in respect of affordable housing. However, whilst the Framework states that the provision of affordable housing should not be sought for major residential developments, this does not apply in designated rural areas. The lack of affordable housing in many rural areas, including the NPs, has important implications for the sustainability of the NPs and their communities<sup>2</sup>. This issue has been assessed and reflected accordingly within the policies of the recently adopted LP.
10. The Authority is concerned that the appeal proposal would set a precedent for similar developments within the NP. Whilst each proposal must be assessed on its individual merits, approval of the appeal scheme could be used in support of

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<sup>1</sup> Local Planning Authority Reference 03/79234.

<sup>2</sup> English National Parks and the Broads – UK Government Vision and Circular 2010.

similar schemes and make it more difficult to resist applications for this type of developments. The cumulative effect would exacerbate the harm that would be caused to the NP.

11. For the reasons detailed above, the appeal site would not constitute a suitable location for new residential development and the appeal scheme would not accord with the Authority's spatial strategy. The proposal would therefore conflict with LP Policies SP4 and SP19. It would also fail to accord with the National Planning Policy Framework (the Framework), which restricts development in National Parks and states that great weight should be given to conserving and enhancing their landscape and scenic beauty.

#### *Character and appearance*

12. The appeal site is located within an area of mixed character, which in the main comprises residential properties of varying sizes and designs and a number of commercial uses. These include a large garden centre which is adjacent to the appeal site. Hazelmere is a two-storey detached property set within a spacious plot, which is to some extent screened by a mature hedge running along the site's front boundary. The size of the plot, together with the mature landscaping along the frontage and the rear boundary of the site, make an important contribution to the spacious and semi-rural character of the locality.
13. The appeal scheme would represent a significant intensification of development on the plot, having particular regard to the quantum of development proposed, and the resultant massing and site coverage of the new dwellings. This would be exacerbated by the extensive areas of hardstanding which would be created to provide access to and parking for all the properties, leading to the loss of much of the undeveloped garden space. Cumulatively, these elements would significantly erode the spacious nature of the appeal site and its contribution to the immediate and wider landscape, but also lead to an urbanisation of the plot which would detract from the character and appearance of the area.
14. Despite being set back from the front building line marked by the existing property, the proposed dwellings would be widely prominent within the street scene. By reason of their scale and height, the houses would only be partially screened by the hedges which are proposed to be retained and also because they would be visible from the access. Furthermore, whilst I appreciate that the design sought to take its cue from the local vernacular, the assertive modernity of the detailing would exacerbate the incongruity of the appeal scheme, which would unduly stand out rather than blending in within its surroundings. The planting of new hedges between the proposed plots, as suggested by the appellant, would not outweigh the harm which would be caused by the proposal.
15. It is also noted that the proposed dwellings would all be nearly 150 square metres. As detailed within LP Policy SP21, the total internal habitable floor area of new dwellings should however be restricted to a maximum of 100 square metres, to ensure that the dwelling stock of the New Forest as a whole is balanced. By reason of the size of the proposed dwellings, the appeal scheme would therefore not reflect the local housing need within the NP.
16. For these reasons, I consider that the proposal would unacceptably harm the character and appearance of the area and the wider landscape of the NP. It would consequently conflict with the design aims of LP Policies SP17, DP2 and

DP18 which, amongst other things, require development proposals to reflect the NP's local distinctiveness. The appeal scheme would also fail to reflect the local housing need within the NP and would therefore not accord with LP Policy SP21. Additionally, there would be conflict with the Framework, as the appeal scheme would fail to conserve and enhance the landscape and scenic beauty of the NP.

### *Protected trees*

17. There are several mature trees within proximity to the rear (southern) boundary of the site, including three Oaks protected by a Tree Preservation Order<sup>3</sup> (TPO). Many of the trees located within the appeal site, as well as the specimen situated on adjacent land, are substantial in size and widely visible within the street scene. Cumulatively, they make a significant contribution to the visual amenity and verdant character of the locality.
18. Four of the proposed dwellings would be built close to some of these trees. Despite the presence of several protected specimens, the Tree Schedule and the Constraints Plan are limited in their scope to ascertain the effect of the proposal on the trees, or how the extent and effect of the works might allow for their future retention. Based on the evidence before me, I am unable to come to the view that the trees would not be adversely affected as a result of the proposal.
19. Whilst the Authority would retain a degree of control over any proposed tree works by reason of the protection afforded by the TPO, applications based on health and safety grounds, for example, would be difficult to resist. The appeal scheme would subject the protected trees to additional pressure for pruning works or even felling, in order to bring more sunlight into the garden areas of the new plots. The appellant submitted a Daylight, Sunlight and Overshadowing Assessment<sup>4</sup> prepared by XCO2, notably to demonstrate that the proposal would provide the required levels of amenity for future occupiers. However, it is unclear whether existing trees were taken into consideration as part of this Assessment, and whether it allowed for their growth and final size.
20. Furthermore, according to the Tree Schedule submitted by the appellant, several of these trees would be expected to live for many more years. Their premature loss would therefore be particularly regrettable and erode the visual contribution which they cumulatively make to the semi-rural character of this area. Whilst it is suggested that a suitably worded condition could be imposed to secure the provision of additional soft landscaping or a planting scheme, this would not overcome the harm which I have identified.
21. The proposed development would prejudice the long term longevity and wellbeing of the protected trees, to the detriment of the character and appearance of the area. It would consequently fail to accord with LP Policies SP6 and DP2 which, amongst other things, seek to ensure that development proposals take opportunities to protect, maintain and enhance the setting of groups and individual trees and locally important sites and features of the natural environment.

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<sup>3</sup> TPO Number: TPO/0008/19.

<sup>4</sup> Dated September 2018.

### *Highway safety*

22. The existing property benefits from a vehicular access onto Southampton Road, which is an 'A' classified road subject to a 30mph speed restriction. The appeal proposal would intensify the use of the access, as it would include the formation of 18 car parking spaces for the existing property and the new dwellings, as well as cycle parking facilities, in accordance with the Authority's adopted standards. The site lies within relative proximity to several bus stops, notably on Southampton Road and New Inn Road.
23. Following a number of concerns raised by the Highway Authority in respect of the effect of the proposal on highway safety, the appellant submitted a Stage 1 Road Safety Audit Report (RSAR) carried out by RKS Associates<sup>5</sup>, and a Transport Statement (TS) prepared by Markides Associates<sup>6</sup>. No further comments have been submitted by the Highway Authority as part of the appeal process. Additionally, I have not been provided with any evidence of the consultation carried out with Hampshire County Council, which the TS refers to.
24. The tracking diagrams<sup>7</sup> included within the TA indicate that adequate turning would be available on site. Nevertheless, the proposed layout would appear very constrained and it is therefore likely that in practice, multiple manoeuvres would be required to enable larger vehicles to enter and leave the site in a forward gear.
25. In order to secure adequate visibility, the RSAR recommends parking to be prohibited on the grass verge located to the west of the site's access. The TS also proposed to relocate the parking layby situated to the east of the site's access which, as detailed within the Highway Authority's original consultation response, is considered as a permanent obstruction to visibility.
26. The appellant suggests that the relocation of the layby could be secured by way of an appropriately worded condition. However, as stated within the Planning Practice Guidance<sup>8</sup> (PPG), conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability, particularly as the Highway Authority has not confirmed that such highway works would be acceptable. For the same reasons, it would not be considered acceptable to impose a condition seeking to restrict parking on the grass verge to the west of the site's access.
27. In the absence of substantive evidence demonstrating otherwise, I am not satisfied that adequate visibility could be provided without relocating the layby. For the reasons detailed above, insufficient information has been submitted to justify the imposition of an appropriately worded condition that would secure the implementation of such highway works. The proposal could consequently increase the risk of collisions with other road users, including cyclists and pedestrians. Whilst I note that the Highway Authority also raised concerns about the gates situated to the front of the site, their removal could be secured through the imposition of a suitably worded condition.

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<sup>5</sup> Dated September 2018.

<sup>6</sup> Project No.18022-01, dated March 2019.

<sup>7</sup> Drawing No.18022-01-SK04.

<sup>8</sup> Paragraph: 009 Reference ID: 21a-009-20140306.

28. On the basis of the available evidence, I am unable to conclude that safe and suitable access would be provided without prejudicing highway safety. The proposal would therefore not accord with LP Policy DP2 which, amongst other things, seeks to ensure that development would not result in unacceptable adverse impacts associated with traffic, and paragraph 108 of the Framework.

### *Protected species*

29. The Authority is concerned that the existing property is a highly likely roosting place for bats, and the appeal scheme could therefore have an adverse effect on these protected species, by reason of the proposed vegetation and landscape changes. A Preliminary Ecological Appraisal<sup>9</sup> (PEA) and an Ecological Strategy Report<sup>10</sup> (ESR) prepared by the Ecology Consultancy were submitted during the course of the appeal. The PEA confirms the presence of a bat roost on the site, whilst both documents recommend further survey work to be undertaken, not just in respect of bats, but also other protected species, including great crested newts and reptiles.
30. Circular 06/2005 advises that it is 'essential that the presence of otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'. Whilst the Circular states that survey should only be required where there is a reasonable likelihood of species being present, it recommends surveys being carried out before planning permission is granted. The appellant has advised that additional appraisals were being finalised, but no such evidence is before me. Having regard to the recommendations set within the reports prepared by the Ecology Consultancy, and in light of the advice contained within the Circular, I consider that this matter could not be addressed through the imposition of a planning condition.
31. On the basis of the available information, there is a reasonable likelihood that protected species may be present on site. Consequently, and in the absence of substantive evidence demonstrating otherwise or measures to mitigate against the effects of the proposal, I am unable to conclude that the proposal would not have an adverse impact on protected species. It would therefore fail to accord with LP Policy SP6, which notably requires development proposals to protect, maintain and enhance features of the natural environment, including habitats and species of biodiversity importance.

### **Other Matters**

32. The appeal site lies within 400 metres of the New Forest SPA and within proximity to the Solent SPAs. The Authority consider that the increased recreational pressure arising from the proposal is likely to have a significant effect on the integrity of these European sites (either individually or in combination with other plans or projects), unless suitable mitigation is provided.
33. No planning obligation has however been submitted to secure the mitigation measures which would be required to ensure that the development does not prejudice the integrity of the New Forest SPA or the Solent SPAs. As I am dismissing this appeal on other substantive grounds, it is not necessary for me

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<sup>9</sup> Dated 28 June 2019.

<sup>10</sup> Dated 28 July 2019.



to consider this matter in any further detail. However, had I considered the development acceptable in all other respects, I would have sought to explore the necessity for undertaking an Appropriate Assessment to ensure the proposal's compliance with Habitats Regulations, in light of the *People over Wind*<sup>11</sup> decision by the Court of Justice of the European Union.

34. The appellant considers that the Authority is currently unable to demonstrate a five-year supply of deliverable housing sites, and relevant policies for the supply of housing could not be considered up-to-date. The appellant's submissions in that particular regard, which include a Legal Opinion prepared by Russell-Cooke LLP, refer to the previous New Forest Local Plan Core Strategy and Development Management Policies DPD, adopted in 2010.
35. As noted above, this document has however been replaced by the recently adopted LP, which is considered as an up-to-date development plan. The level of housing required within the area administered by the Authority would have been duly considered as part of the local plan making process and the public examination. As detailed within the Authority's submissions, the issue of housing delivery within the NP was discussed at length as part of the Local Plan Examination. In particular, I note that the Inspectors were satisfied that the Authority had 'rigorously and comprehensively sought to identify all sources of housing land' within the context of 'significant and fundamental constraints'.
36. Additionally, the application of policies in the Framework that protect areas of particular importance provide in this instance a clear reason for refusing the development proposed which, as detailed within footnote 6, include national parks. In such circumstances, the presumption in favour of sustainable development set within paragraph 11 of the Framework does not apply. My attention has been drawn by the appellant to a number of appeal decisions, but I am not convinced that the circumstances that applied in these particular cases constitute a direct parallel to the proposal before me, notably in respect of location, development plan and national planning policy. In any event, I am required to determine the proposal on its individual merits.

## Conclusion

37. For the reasons detailed above, I conclude that the proposal would not accord with the LP and there are no material considerations which indicate that it should be determined, other than in accordance with the development plan. The appeal should therefore be dismissed.

*S Edwards*

INSPECTOR

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<sup>11</sup> People over Wind, Peter Sweetman v Coillte Teoranta, Case C-323/17.