



Appeal Decision

Site visit made on 28 January 2020

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Appeal Ref: APP/B9506/W/19/3239224

Tanglewood Stables, Balmer Lawn Road, Brockenhurst SO42 7TS

- 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 D Truder against the decision of New Forest National Park Authority.
 - The application Ref 19/00395, dated 15 May 2019, was refused by notice dated 9 July 2019.
 - The development proposed is change of use of existing building to dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of existing building to dwelling at Tanglewood Stables, Balmer Lawn Road, Brockenhurst SO42 7TS in accordance with the terms of the application, Ref 19/00395, dated 15 May 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1 - Location Plan, 2- Site Plan, 3 - Existing and Proposed Elevations, 4 - Existing and Proposed Floor Plans.
 - 3) Prior to the commencement of development, measures for ecological mitigation and enhancement (including timescales for implementing these measures) shall be submitted to and approved in writing by the local planning authority. The measures thereby approved shall be implemented and retained at the site in perpetuity.

Application for costs

2. An application for costs was made by Mr D Truder against the New Forest National Park Authority. This application is the subject of a separate Decision.

Procedural matters

3. In August 2019 the Authority adopted the New Forest National Park Local Plan 2016 – 2036 (the NPLP). This therefore became part of the development plan for the area superseding the policies referred to on the decision notice. I have used the policies in the NPLP in making this decision.

4. The appeal was originally accompanied by a Planning Obligation by way of Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 9 October 2019. Following comments from the Authority the appellant submitted a revised version dated 3 January 2020. I will discuss this below.

Background

5. In 1997 the District Council of the New Forest, as the then local planning authority for the area, issued an enforcement notice alleging a material change of use of part of the barn on the appeal site to residential use on an intermittent basis. This was noted by the Council as being complied with in November 1998.
6. In 2007 a Certificate of Lawful Development or Use pursuant to Section 191 of the Town and Country Planning Act 1990 (as amended) was issued. In respect of the area the subject of the appeal "use of the land ... for the stationing of a caravan for residential purposes" was certified as a lawful use. I will refer to this certificate as "the LDC".

Main Issues

7. The main issues are:
 - the effect on the character and appearance of the area;
 - the effect on habitats sites¹; and
 - whether there are any material considerations which mean that the decision should be made otherwise than in accordance with the development plan.

Reasons

Character and appearance

8. The appeal site lies to the rear of frontage development on the south side of Balmer Lawn Road. It consists of a five-bay metal framed barn, the eastern section of which has been enclosed with blockwork, together with an open area to the south and east of the barn. Further land within the control of the appellant provides access to the site from Balmer Lawn Road and there are two stable blocks on this additional land and paddock areas to the southwest and east.
9. The proposal is to use the blockwork section of the site as a dwelling on two floors. At the time of my site visit the rooms had been laid out for residential use but, apart from the kitchen and bathrooms, had no furniture although there were carpets or vinyl floor coverings on the floors.
10. Policy DP35 of the NPLP deals with replacement dwellings. It indicates that the replacement of dwellings will be permitted except where the existing dwelling, insofar as is material to this appeal, is the result of an unauthorised use. The Policy goes on to say the caravans and mobile homes may not be replaced by permanent dwellings. There are other criteria but these are not material to this appeal.

¹ As defined in the Glossary to the National Planning Policy Framework

11. There is no statutory definition of a dwelling in planning legislation. However, a caravan does not represent a dwelling and there is no lawful residential dwelling on site.
12. The introduction of a dwelling on the appeal site within the existing building would lead to an urbanisation of the area including to the south where there would be the likelihood of domestic paraphernalia. This would be harmful to the character and appearance of the area and the scenic beauty of this part of the National Park. Consequently, the proposal would be contrary to Policy DP35 of the NPLP as set out above. It would also be contrary to Policy SP7 of the NPLP in that it would be harmful to the landscape character and detract from the natural beauty of the National Park. As paragraph 172 of the National Planning Policy Framework (the Framework) makes clear great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks.

Habitats sites

13. The appeal site lies in close proximity to the New Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) and within 5.6km of the Solent and Southampton Waters SPA. I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). I will collectively refer to these areas as "the habitats sites".
14. The Authority explains that additional residential development within proximity of the habitats sites would have, in combination with other plans and projects, significant effects on the habitats sites through increased recreational disturbance from the occupiers and through increased nutrient load. Based on its analysis that the proposal would represent an additional dwelling it therefore considers that in combination the proposal would have such an effect and therefore concludes that an Appropriate Assessment is necessary.
15. Pursuant to this issue the appellant submitted the Planning Obligation which seeks to make a contribution towards mitigation of the effects of the proposal on these habitats sites. This is so that I can conclude that the proposal, in combination with other plans and projects, would not have a significant effect on the integrity of those sites. The Planning Obligation also provides that the appellant covenants, prior to the commencement of development, to permanently remove the existing caravan from the site and thereafter not to use the site, nor any of the land in the appellant's ownership, for the stationing of a caravan.
16. However, I do not believe that the Authority's analysis is correct. The LDC makes clear that the caravan can be occupied residentially. For the purposes of the consideration of the effects on habitats sites there is thus one residential unit on site at present. Subject to the cessation of the use for the stationing of a caravan for residential purposes, following the proposed development there would be one residential unit on site. While the Solent Recreation Mitigation Strategy seeks different contributions towards mitigation based on the size of the dwelling being permitted, this does not apply to extensions to dwellings. The Strategy makes it clear that contributions are only sought for "every net additional dwelling", not incrementally as dwellings enlarge, since it is not asserted that enlarged dwellings would have a significant effect either on their own or in combination with other plans or projects. This equally applies in relation to the New Forest SPA and SAC. While a caravan is not a dwelling, for

the purposes of this issue the quoted phrase would be better identified as "every net residential unit".

17. I therefore conclude that there would be no increase in the numbers of residential units on site. Consequently, I can exclude the possibility that the proposal would be likely to have a significant effect on the habitats sites, either on its own or in combination with other plans or projects.
18. That being the case the contributions in the Planning Obligation towards the New Forest SPA Mitigation and the Solent SPA Mitigation are not necessary to allow the development to proceed. Consequently, I cannot take the covenants to provide contributions to these into this account pursuant to Regulation 122 of the Community Infrastructure Levy Contribution Regulations 2010 (as amended) (the CIL Regulations) since they are not necessary to make the development acceptable in planning terms. Equally, they would not comply with the policy tests set out in paragraph 56 of the Framework.
19. For the avoidance of doubt, the remaining covenant in the revised Obligation dated 3 January 2020 relating to the cessation of the site for the stationing of a caravan for residential purposes is necessary and complies with Regulation 122 of the CIL Regulations and paragraph 56 of the Framework.

Other considerations

20. The appellant makes clear that in the event the appeal is dismissed, he is minded to remove the existing caravan from the site, which was present at the time of my site visit, and replace it with another caravan which would comply with the statutory definition of a 'caravan'. This could include a twin-unit caravan which would be materially larger than the touring caravan I saw.
21. Due to the potential size, the appellant maintains that the caravan would not be located within the envelope of the existing barn but would be rather located to the south immediately adjacent to it, being within the area defined as lawful by the LDC.
22. The consideration of a 'fall-back' is a two-stage process. Firstly, it should be ascertained whether there is a greater than theoretical possibility that the development might take place, and if there is, then it is for the decision maker to determine the weight to be ascribed.
23. In this case I conclude that there is a greater than theoretical possibility of one caravan being replaced with another, physically larger, on the appeal site. The appellant has made clear his intention and explains why it has only recently become his intention so to do. I have no reason or evidence to doubt this. That being the case I consider that the fall-back should be given very substantial weight.
24. This fall-back would have a greater effect on the landscape and scenic beauty of this part of the National Park than the appeal proposal since it would extend the volume of a structure into this area with the existing building remaining. While this area to the south of the building could not then be used for domestic paraphernalia, I consider that the effects of a larger, lawful caravan would be more significant and of greater harm than that of paraphernalia.
25. The Authority has made reference to this being a precedent for similar proposals. However, each case needs to be considered on its own merits.

26. Because the Planning Obligation removes the possibility of the proposal taking place and a caravan being sited pursuant to the LDC I am satisfied that this is an other material consideration which indicates that the appeal should be determined otherwise than in accordance with the development plan and consequently the appeal allowed and planning permission granted.

Conditions

27. I have considered the conditions put forward by the Authority against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty.

28. The Authority has requested landscaping conditions be imposed, however, I can see no reason why that is necessary. The introduction of landscaping could reduce the area available for floodwater should the adjacent river to the south flood; the site being in Flood Zone 3 and this would thus be undesirable.

29. However, I do consider that a scheme for ecological mitigation and enhancement should be secured in the interests of the ecology of the area and to accord with paragraph 170 of the Framework which seeks to provide net gains for biodiversity. As the existing building is essentially fit for purpose, only needing to have furniture installed to make it habitable, I consider that this needs to be agreed prior to development commencing. I have, however, amended the wording suggested by the Authority to better reflect the relevant guidance. The appellant has agreed to this as a pre-commencement condition.

30. For the reasons set out above, I do consider that mitigation for the effects of the development on the habitats sites is not necessary since the number of residential units would remain the same as at present and consequently there would be no additional effects from the proposal.

31. For completeness I have not included a condition requiring the cessation of the use of the appeal site as a caravan site as this is secured in the Planning Obligation and a condition would be an unnecessary duplication.

Conclusion

32. For the reasons given above I conclude that the appeal should be allowed.

RJ Jackson

INSPECTOR