



Appeal Decision

Site visit made on 25 November 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2025

Appeal Ref: APP/B9506/W/24/3338105

The Bunker, land south of the A35 Lyndhurst Road, near Ashurst Railway Station, Ashurst, Hampshire SO40 7AA

- 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 Mr Paul Hookings (Cater Building Repairs Ltd) against the decision of New Forest National Park Authority.
 - The application Ref is 23/01026FULL.
 - The development proposed is change of use and conversion of existing building to a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Authority has published relevant criteria to identify buildings to be added to its Local List of Heritage Assets (LLHA). Considering the National Planning Policy Framework (the NPPF)¹ this non-statutory LLHA includes buildings that are non-designated heritage assets. The Authority assessed The Bunker using these criteria and added it to the LLHA in December 2022. This was well before the planning application was submitted in August 2023, at which time the appellant accepted The Bunker was a non-designated heritage asset.
3. There is, therefore, no apparent credible basis for me to find otherwise now, as is suggested by the appellant. Nor is there any such basis to find that despite the Authority considering The Bunker as a non-designated heritage asset in making its decision and informing reasons for refusal, less weight applies to this status because this building should not have been added to the LLHA². Both propositions are anyway untenable given that in this appeal the appellant accepts The Bunker 'can be described as a non-designated heritage asset'³. Accordingly, I have determined the appeal on the basis that The bunker is a non-designated heritage asset, incorporated in the LLHA and I give full weight to this status.

Main Issues

4. The main issues are:
 - whether the site is suitable in location and appropriate for a market dwelling by conversion and re-use of The Bunker;

¹ December 2024 - paragraphs 202, 216 and Annex 2: Glossary 'designated heritage asset' and 'heritage asset'

² Appeal Statement of Case, January 2024 (ASoC) - paragraph 1.3, 5th bullet point and paragraph 2.8

³ ASoC paragraphs 7.1 and 14.5

- the effect of the proposal on the significance of The Bunker non-designated heritage asset;
- the effect of the proposal on bats and reptiles, which are protected species; and
- whether the proposal would provide sufficient internal living space and satisfactory private external amenity space.

Reasons

5. The site is a small parcel of largely previous scrub land, now cleared, containing a disused above ground air raid shelter known as 'The Bunker'. It is part of a limited assemblage of a few rural houses, railway station and pub in the New Forest National Park (the NP). The Bunker is near the edge of Ashurst village, outside the defined settlement boundary in the countryside. It would be converted and used as a one-bedroom, up to two-person market dwelling with the rest of the site a garden.

Suitable and appropriate

6. Occupant(s) of the dwelling could easily walk to the railway station, which includes services to London, or to the pub. A pavement with streetlighting along the A35 would give a convenient means of access (via steps or level access) to some facilities and services a short distance away in Ashurst, so meet many day-to-day living needs, and to bus stops, including services to Southampton. This road could as well be used to safely cycle to Ashurst or beyond.
7. However, the NP is a nationally protected landscape, one of only 10 in the country. The Authority's local plan (the LP)⁴ spatial strategy is underpinned by the two statutory purposes of a National Park⁵ and the duty to foster economic and social well-being of local communities within a National Park. The government considers that National Parks are 'not suitable locations for unrestricted housing'⁶.
8. The LP therefore reflects the character of the NP and meets needs of local communities with modest new development, rather than cater for external demand, such as a full identified need for (and all types of) housing. This would otherwise be incompatible with the NP. In this context, the LP directs a level and type of housing to locations most suitable to maintain the vitality of local communities in the NP and support local services in the NP. This includes market housing inside the defined settlement boundary of Ashurst, or in the countryside, dwellings for agricultural workers including NP commoners or estate workers.
9. It does not include market housing elsewhere, beyond that which has already been planned for, and not anyway by conversion and use of a building in the countryside; even if, as in this case, a windfall site and previously developed land. So, although occupant(s) of the dwelling would likely help to sustain facilities and services in Ashurst, this would be by coincidence of opportunistic proximity of this site and building not by design of the LP. This isolated market dwelling would instead consolidate scattered or sporadic development in the countryside in the NP, at odds with the LP spatial strategy and the NP purposes.

⁴ New Forest National Park Local Plan, Adopted August 2019

⁵ To conserve and enhance the natural beauty, wildlife and cultural heritage of the area, and to promote opportunities for the understanding and enjoyment of the special qualities of National Parks by the public

⁶ English National Parks and the Broads: UK Government Vision and Circular 2010, March 2010 - paragraph 78

10. The LP was prepared, examined and adopted under a previous National Planning Policy Framework (the previous NPPF)⁷. It was found to be sound by an Inspector, so in conformity with national policy at the time. The LP therefore took account of the previous NPPF objectives for rural housing⁸. For the purposes of this appeal, those provisions are in essence equivalent to NPPF paragraphs 82 and 83. Similarly, with regard to the development of isolated homes in the countryside the initial part of NPPF paragraph 84(c), about re-use of redundant or disused buildings, is in substance equivalent to the previous NPPF⁹. In-line with the NPPF, the previous NPPF recognised that National Parks have the highest status of protection in relation to landscape and scenic beauty and that great weight should be afforded to conserving and enhancing their landscape and scenic beauty. Plans should also recognise the intrinsic character and beauty of the countryside.
11. Consequently, irrespective of whether the proposal would also enhance its immediate setting, it is not unexpected that NPPF paragraph 84(c) – which otherwise includes scope for an isolated market house in the countryside by re-use of a building – is absent from the LP. That it does not provide for market housing by the means as proposed in this appeal does not render the LP out-of-date, as the appellant suggests; it is justifiably and of necessity ‘stricter’ than the NPPF in this regard. As such, NPPF paragraphs 82, 83 or 84(c) alone, or combined, do not usurp the Authority’s wider policy objectives for the NP as set out in the LP. These are consistent with relevant provisions of the NPPF taking the NPPF as a whole.
12. Having regard to all the above, I find that the site is not suitable in location or appropriate for a market dwelling by conversion and re-use of The Bunker. As a result, the proposal conflicts with LP Policies SP4, SP19 and DP49 which, amongst other things, do not permit market housing by re-use of buildings outside defined settlement boundaries in the countryside in the NP.

Non-designated heritage asset

13. The significance of The Bunker includes that it is a rectangular, solid brick single-storey building with reinforced cast concrete slab roof and floor, set within an otherwise open site that functions as means of access to it and immediate setting. Also, details such as a staggered baffle entrance layout with narrow side hung black painted steel door, single main open internal void with a row of concrete bench seating on brick piers along opposing walls, an emergency escape and high level ventilation openings. Despite some deterioration to parts of its structure or fabric, the Authority believes The Bunker to be the largest and best preserved civic air raid shelter in the New Forest, which is not disputed by the appellant. As such, significance is also informed by age, rarity and local architectural interest and historic cultural association with the New Forest and resident population during a nationally significant crisis in World War II. To the uninformed, it also has curiosity value which adds to the significance of this non-designated heritage asset which is plainly locally distinctive.
14. The conversion would retain the building’s dimensions without extension, concrete flat roof, the main part of the internal baffle layout and most of the ventilation apertures. Repairs to structure and fabric would restore building integrity and

⁷ March 2012 or February 2019

⁸ Paragraphs 54 and in part 55 and paragraphs 77 and 78 respectively

⁹ Paragraph 55, 3rd bullet point and paragraph 79(c) respectively

incorporate insulation, heating, electricity and plumbing works requisite for the intended residential use.

15. However, inside, the bench seats would either be removed, obscured by fixtures or fittings or, as appears from the plans (given absence of explanation to the contrary) be replaced by structure that might be intended to replicate some of this feature by some means. The main internal void would be sub-divided unequally by a partition with sliding steel door towards one end to form a bedroom and a separate combined living, dining and living space. The staggered baffle entrance area would be separated by a similar door for a shower room (with toilet and hand wash basin) including a small utility space. Brick wall and concrete ceiling surfaces would be covered over with plasterboard and the concrete floor covered by floor joists with decking.
16. Outside, a substantial section and proportion of the west (inward facing) brick elevation would be removed and replaced with a pair of wide, floor to ceiling aluminium framed overlapping plate glass sliding entrance doors. These would be flanked each side by a narrow top hung window of the same height and framing with a similar window replacing the steel entrance door. These windows would incorporate a sliding steel external shutter top hung on a rail. The three inward facing external elevations would otherwise be clad in corrugated galvanised steel 'roofing' sheets.
17. An apparently 'retained brick-and-mortar wall'¹⁰ (ie the outward facing elevation next to the footpath) is, on the face of it, not consistent with an intention that the building 'will be converted using brick-and-mortar'¹¹ (emphases added). In the absence of clarity, and as I saw, the precise, uniform likely engineering style yellow/buff colour bricks¹² in situ are materially different to what otherwise appears would be an essentially re-built or new red brick elevation¹³.
18. It is suggested that most of the main external and internal form, structure and fabric of the building would be incorporated and elements of the proposal could evoke a military or utilitarian aesthetic or are akin to New Forest agricultural buildings. But there is no condition survey or meaningful details of any of these works. Even if they were all acceptable, I cannot therefore be certain that they could be carried out in the manner proposed for the residential use intended, including without further unwarranted or undesirable intervention to the fabric or structure of the building. Sufficient detail is relevant to the principle of granting planning permission in this case, so cannot be left to a post-decision condition.
19. The rest of the site would be internally sub-divided by a fence, it seems intended to differentiate a front and back garden including a block paved 'patio/walkway'. Even if permitted development rights for this new residential curtilage were restricted or removed by a condition (for example to control outbuildings, such as sheds) these parts of the site could still be used for a range of usual residential activity including sitting out, relaxation, entertaining, gardening or drying clothes with associated domestic paraphernalia.
20. As a result, while the building would be retained and albeit a small-scale proposal, important physical or visual features of the building would be permanently lost or

¹⁰ Planning, Design and Access Statement (incl. heritage statement) August 2023 (PDAS) - paragraph 7.4

¹¹ PDAS - paragraph 8.4

¹² PDAS - Figure 1

¹³ 'CGI1' and 'CGI2' plans

covered over and concealed, including materials fundamentally different in appearance and composition to what exists. These alterations and re-purposing of the site would significantly erode and detract from the building and its setting, with unsympathetic cumulative change at odds with the essence and cohesiveness of the building and its plot. It would no longer project a cogent functional expression of an air raid shelter so manifestly undermine innate cultural heritage value and public understanding of this building in the NP. These outcomes would considerably diminish the significance of The Bunker.

21. This locally distinctive building is in public view over the existing site boundary fences from part of the elevated A35 pavement, where there is a gap in roadside vegetation in a bank, likely more so in winter months. Also, from steps at this point descending towards one end of the building continuing as a public footpath alongside the building and past it at the other end. The dwelling and garden would be conspicuous and plainly observed as something materially different to what exists so adversely affect how The Bunker would be experienced and appreciated.
22. The building would not be totally lost and though the Authority's archaeology officer suggested a historic building survey if planning permission was to be granted, it was not the position taken by the Authority's conservation officer or in the officer report. While no doubt useful, a historic record of the building (such as written description, plans, photographs or video) taken prior to the proposed conversion works could not be appreciated in the same visual or spatial way as in reality. It would not, therefore, provide satisfactory mitigation or compensation in this case.
23. Much of the conversion work is a consequence of the intended residential use of The Bunker. There is no objective evidence that a different use could not be achieved with fewer or less significant interventions to building structure, fabric or appearance or to the rest of the site, such as an indicative scheme. Nor that the appellant has sought to establish any other use 'through planning' and no reason why not; including any sufficiently considered and sustained investigation of possible alternative uses or marketing of The Bunker with cogent reasons why potential uses did not progress.
24. There is thus little to suggest that the appellant's claims about other use(s) are essentially no more than speculation, or to dispel residential use as simply a personal preference. In which case, the appellant has not justified that it is the only effective viable use of The Bunker consistent with its conservation. Nor that it is the optimum viable use to secure and sustain a positive future for the building. This has at least likely contributed to why the building is 'underused' or is said would fall further into 'disrepair' otherwise.
25. This also somewhat undermines the voracity of the alleged consequences of planning permission not being granted through this appeal, considering that the Authority has previously determined that prior approval is not required to demolish The Bunker¹⁴. This would result in permanent total loss of significance but given the insubstantial consideration of alternatives, if it were nonetheless demolished by the appellant this would, on the face of it, incur a financial cost, eliminate any possibility of alternative viable use compliant with relevant provisions of the LP and the NPPF and give little or no apparent beneficial return. Moreover, the public and private liabilities that are, it seems, also said to incline the appellant towards demolition

¹⁴ PADE23/00092 dated 22 February 2023

(but only if residential use is not granted) relate to trespass potentially causing danger to individuals, including children, or anti-social behaviour. These are important matters but the site has been secured by a fence which would help to deter entry onto this land. There is also no apparent reason why The Bunker could not be secured with the black metal entrance door being locked and the emergency escape bricked up or secured by a metal panel or similar to deter or prevent entry. The appellant has not, therefore, demonstrated that there is a real prospect of greater than a theoretical possibility of this fallback development (demolition) occurring.

26. Taking all the above into account, I find that the proposal would have an appreciable negative impact on The Bunker non-designated heritage asset. Consequently, it is contrary to LP Policies SP16 and DP2. These policies include that development should protect locally important features of the historic and built environment, conserve and enhance the significance or special interest of heritage assets and make a positive contribution to, or better reveal, appreciation of them and their settings. It should also enhance local distinctiveness, including in design, and be appropriate and sympathetic in appearance and layout.

Protected species

27. The appellant's Bat Activity Survey Report (BASR) and Reptile Survey Report (RSR) include presence/absence surveys. There is no compelling objective evidence that these reports and surveys were not conducted in accordance with generally recognised best practice and accepted methodology, including at appropriate times of the year by a competent person. As such, they are reliable. The Authority's concerns with 'limitations' of the appellant's earlier Preliminary Ecological Assessment (PEA) were largely overtaken by the BASR and RSR, despite the PEA finding 'No secondary evidence of bats was noted, but it appears that the building had recently been cleaned out' and The Bunker and the site were previously more overgrown than at the time of the PEA and my site visit¹⁵. I do not condone this apparent sequence of events but relevant legislation in respect of possible offences in relation to protected species is not a matter for this s78 appeal.
28. The BASR found a low level of foraging and commuting bat activity at the site with no emergences from The Bunker, so it was considered unlikely to be supporting a bat roost, and the RSR found no reptiles on the site. In these circumstances, a precautionary approach to works to The Bunker outside of the bat hibernation period with ecologist supervision, including removal or alteration of potential bat roosting features, could be secured by a condition. If a bat was found and a roost confirmed, works would cease and a European Protected Species Mitigation Licence sought. Similarly, a precautionary approach to vegetation or rubble clearance for reptiles, including a working method statement would be appropriate and could be secured by a condition.
29. The BASR also includes recommendations for bat habitat enhancement by bat boxes. The PEA set out that these could be attached to The Bunker. There are no such details before me, which might otherwise be relevant in principle to suitability given the non-designated heritage assets status of this building. But the BASR confirms bat boxes could instead be attached to trees on wooded land next to the site on one side. These trees are protected by a Tree Preservation Order and this

¹⁵ PDAS - Figure 1 and PEA site photographs

‘blue edged’ land¹⁶ is also owned by the appellant. Details of bat boxes could therefore be secured by a condition, including to ensure they were implemented and retained thereafter, as could a condition for suitable lighting at the site to avoid interfering with bat flight. The RSR also includes reptile mitigation measures such as log piles, rockeries and hibernacula creation, grassland seed planting and management of scrub to prevent encroachment. There are no details of these works before me but in the event the proposal was acceptable in other respects, there is no apparent reason why these sorts of measures would be incompatible with apportioning parts of a garden for this purpose. Suitable details could be approved, implemented and retained using a condition.

30. Given all the above, I am satisfied that the presence or otherwise of protected species, and the extent that they may be affected by the proposal, has been established, including the suitability of necessary mitigation or enhancement measures which must be informed by appropriate survey¹⁷. I therefore find that the proposal would not cause harm to bats or reptiles, which are protected species. As such, the proposal does not offend LP Policy SP16 (significance of a heritage asset) and complies with LP Policy SP6. This policy includes that development should enhance important features of the site such as habitats and species of biodiversity importance having regard to appropriate mitigation or compensation.

Living space and external amenity space

31. If used as a one-person dwelling there would be slightly less than the relevant government minimum gross internal floor area; notably less if it were used as a two-person dwelling, which would be possible. I have not been informed that the Authority has adopted these standards¹⁸ in a development plan policy, including LP Policy DP2 cited in reason for refusal 3, so they are a useful measure in this appeal. There would be modest space for personal storage (such as clothes) and some circulation space would be limited by fixtures or fittings. However, the internal layout would make effective use of the regular building shape and rooms would make efficient use of the available space, including because the combined kitchen, dining and living area would be open plan and a shower room has no bath. There is no reason why this living accommodation would not be high quality in design or construction. Consequently, though compact, this practical arrangement of sufficient useable space would facilitate satisfactory residential use, conducive to occupation of the building by one or two people without being ‘extremely cramped’.
32. A taller fence than the boundary fence already erected would be needed along a very short section at the rear of the building to prevent views from the public footpath into the ‘back’ garden. Even if a conventional 1.8m or 2m high fence also returned along the rear boundary of the site and across the rest of the back garden, this would not prevent some people overlooking it from the steps or the pavement next to the A35. However, closer views towards the back garden would be lower down and higher views more distant, all mostly in one direction of travel and transient or glimpsed, including due to the roadside vegetation in the bank even when not in leaf. Moreover, people using the steps or pavement at an elevated level would mostly be out of normal line of sight so less likely to be noticed from the back garden or result in unacceptable actual or perceived loss of privacy.

¹⁶ Drawing number 23123.01 B – site location and block plan

¹⁷ Circular 06/2005 Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system; British Standard for Biodiversity: Code of Practice for Planning and Development BS 42020

¹⁸ Technical housing standards – nationally described space standard, March 2015 (notes added May 2016)

33. Having regard to all the above, I find that the proposal would provide sufficient internal living space and satisfactory private external amenity space. It therefore complies with LP Policy DP2 which includes that development should be appropriate in layout and not result in adverse impact on amenity by overlooking.

Heritage Balance

34. The NPPF sets out that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. The effect of an application on the significance of a non-designated heritage asset should be taken into account. In weighing the direct (in this case implications of physical works) and indirect (in this case implications of change to setting) effects of the proposal on The Bunker, a balanced judgement is required having regard to the scale of the harm to the significance of this non-designated heritage asset. The aims of the Authority's relevant LP policies in these regards are broadly consistent with these provisions of the NPPF.
35. The Housing Delivery Test does not apply in National Parks and there is no dispute that the Authority can demonstrate a five year supply of deliverable housing sites. The proposal would, though, be aligned with objectives of the NPPF to significantly boost the supply of homes to meet peoples living needs. A single dwelling would make a small contribution so this public benefit has limited weight. Subject to conditions the dwelling would be water and energy efficient and ecology enhancement at the site would result in biodiversity net gain. These outcomes would meet relevant LP policies and help to achieve objectives of the NPPF for climate change and conserving the natural environment. The proposal is small-scale so these public benefits have limited weight.
36. Set against this, the site is not suitable in location or appropriate for a market dwelling by conversion and re-use of The Bunker in the NP, so would cause significant harm to the Authority's development plan spatial strategy. The proposal would also manifestly adversely erode and undermine the coherence of The Bunker and the site in the NP so notwithstanding that it is a non-designated heritage asset, the scale of harm by loss of significance would be considerable.
37. The public benefits do not, therefore, outweigh the harm.

Other Matters

38. The proposal is within a zone of influence of a Special Protection Area and a Special Area of Conservation. With final comments the appellant submitted an executed planning obligation in the form of a unilateral undertaking dated 13 May 2024 (the UU). It purports to make necessary mitigation by requisite financial contributions for the recreational impact of the occupants of the dwelling on these protected sites. The Authority considers the UU overcomes part of its reason for refusal 4, but not in relation to nutrient impact. The appellant considers that the nutrient mitigation checklist submitted with the appeal, in conjunction with a condition, overcomes this part of RfR 4. As the Competent Authority, it would ordinarily be necessary for me to undertake Appropriate Assessment¹⁹. But as I intend to dismiss the appeal, even if the proposal did not adversely affect the integrity of these protected sites, so not provide a clear reason for refusing the

¹⁹ The Conservation of Habitats and Species Regulations 2017 (as amended)

development, there is no need for me to consider this matter any further. This is because it would not affect my decision or therefore alter the outcome of the appeal.

39. The Authority did not object to the proposal for any other reasons but absence of further harm is a neutral factor in my decision. None of the other conditions suggested by the main parties would overcome the harm outlined earlier in the respective main issues.

Planning Balance and Conclusion

40. The proposal conflicts with local and national planning policy for the provision of housing and protecting heritage assets, in this case in a National Park. There are no other material considerations to indicate that the appeal should be determined otherwise than in accordance with the development plan taken as a whole²⁰. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR

²⁰ Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended)