

## **NEW FOREST DISTRICT COUNCIL**

Town & Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004)

The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI: 2000/1625) as amended.

Appeal by AJC Group against the decision of New Forest District Council to refuse permission to demolish the existing buildings and erect of 25 dwellings with associated access, landscaping and parking at:

**ORCHARD GATE, NOADS WAY, DIBDEN PURLIEU, HYTHE SO45 4PD**

### **STATEMENT OF CASE**

PINS Ref: APP/B1740/W/23/3324227

LPA Ref: 22/10813

James Gilfillan. MATCP, MRTPI.

## **1. Introduction**

- 1.1 This is an appeal under section 78 of the Town and Country Planning Act 1990 (as amended) against the decision of NFDC to refuse permission to demolish existing buildings and erect 25 dwellings with associated access, landscape and parking.
- 1.2 The application was refused by officers acting under delegated powers on 19 December 2022 for seven reasons, as set out on the decision notice attached to this statement. The Case Officer's report sets the Planning background for the site, the Development Plan framework and site constraints/designations, that is also attached to this statement.
- 1.3 Those reasons are in summary; (1) failure to respect the character of the area or deliver a high quality design that would contribute positively to local distinctiveness; (2) failure to demonstrate that adequate visibility can be achieved at the site access or forward visibility within the site or to take appropriate opportunities to promote the use of sustainable transport modes; (3) failure to demonstrate that surface water drainage will be dealt with adequately or as sustainably as possible; (4) failure to demonstrate that recreational and air quality impacts on European Sites would be adequately mitigated and avoid any significant impact; (5) failure to provide sufficient recreational and open space for residents; (6) failure to provide affordable housing and (7) impact on trees and landscape setting.

## **2. Background, history and policy matters**

- 2.1 The background to the case will be given, describing the site and its surroundings, the appeal proposal and relevant planning history.
- 2.2 The Council will rely on relevant national guidance, local adopted planning policy and supporting Supplementary Planning Guidance/Documents as listed in the Case Officer report and below.
- 2.3 The Council will take account of the statutory duties in Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70 of the Town and Country Planning Act 1990.

- 2.4 The Council will take account of the statutory duties set out in the Conservation of Habitats and Species Regulations 2010 (Habs regs) in its evidence.

### **3. The Council's Case**

- 3.1 The Case Officer report in support of the application is attached to this statement and the Council's case will amplify the considerations therein leading to the reasons for refusal as presented by the decision notice.
- 3.2 In relation to the first reason for refusal, the Council will identify the distinctive urban and landscape characteristics of the immediate surroundings and explain in detail, supported by evidence, why the scheme would fail to respond to local character failing to comply with the requirements of national guidance and adopted local plan policies.
- 3.3 It will also demonstrate that the scheme does not deliver a well planned high quality design that would contribute positively to local distinctiveness enhancing the character of the area.
- 3.4 In relation to the second reason for refusal, the Council will demonstrate that the scheme has failed to properly assess the requirements for visibility at the proposed access to the site or forward visibility within the site. Therefore, it has not been demonstrated that there would be no unacceptable impact on highway and pedestrian safety.
- 3.5 The Council will also demonstrate that the scheme has failed to take appropriate opportunities to improve the safety and access of residents seeking to travel by modes of travel other than the private car and promote active travel choices.
- 3.6 In respect to the third reason for refusal, the Council will demonstrate that the Appellant has failed to undertake appropriate and sufficient testing of the ground conditions, in accordance with best practice and guidance to justify the drainage strategy presented. The Council considers that not all options for sustainable drainage have been explored sufficiently for sustainable drainage to be discounted and the scheme therefore fails to comply with the drainage hierarchy.
- 3.7 In relation to the fourth reason for refusal, the Council notes the implications of the *People over Wind*, *Peter Sweetman v Coillte Teoranta* judgment in the Court of Justice of the European Union (12 April 2018) and the requirement for housing developments which could have significant impact on European Sites to be subject to an Appropriate Assessment.

- 3.8 The Council will offer evidence that such habitats are present locally and adverse impacts would occur in respect of the impact of recreational activities arising from the development on Forest and Solent Habitats and mitigation is required in accordance with adopted local plan policies STR1 and ENV1.
- 3.9 Similarly the Council will demonstrate why a precautionary approach is being applied to the impact of increased vehicle movements on air quality and consequential Nitrogen deposition on New Forest Habitats.
- 3.10 In the absence of mitigation being secured it would not be possible to conclude that adverse effects would not be caused or an Appropriate Assessment of the Habs Regs passed. Paragraph 182 of the NPPF would therefore be engaged.
- 3.11 Reason for refusal 5 refers to the failure of the scheme to make provision for the recreational and open space needs of residents in accordance with saved policy CS7. The Council will demonstrate why such provision is required and that the scheme does not deliver appropriately.
- 3.12 The appellant, in their GOA, have indicated an intention to offer a financial contribution. The Council does not have a standard methodology for calculating financial contributions in lieu of on site provision, but will endeavour to work with the Appellant to identify an appropriate solution.
- 3.13 Reason for refusal 6 relates to the failure to secure the provision of affordable housing. The Council will provide evidence to demonstrate that such provision can viably be delivered by the development in accordance with adopted local plan policy HOU2.
- 3.14 Reason for refusal 7 refers to the impact of the development on trees on and adjoining the site and the inability of the layout to accommodate space for landscape setting commensurate with the character of the area.
- 3.15 However, the Council currently considers that the amended plans submitted by the Appellants GoA are likely to largely resolve the first issue. Therefore, if the inspector is minded to accept them, then (subject to consideration of any consultation responses received in respect of them), the Council may be able to withdraw its objection on this ground.

- 3.16 In respect of the second part of the reason for refusal the Council will demonstrate how the layout of the scheme does not make sufficient provision of space for trees to be planted, of a scale, to achieve a character that respects the quality of the existing landscape.

#### **4. Conclusions**

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires, where regard is to be had to the development plan that the determination of a planning application be made in accordance with the development plan unless material considerations indicate otherwise.
- 4.2 Section 70 of the Town and Country Planning Act 1990 requires planning authorities to have regard to the provisions of the development plan so far as material to the application, and to any local finance considerations so far as material to the application and to any other material considerations when dealing with an application for planning permission.
- 4.3 Regulation 63 of the Conservation of Habitats and Species Regulations 2017 places a duty on the local planning authority, as competent Authority, to only grant planning permission where adverse impacts of the development on the integrity of the European Site can be avoided by conditions or limitations.
- 4.4 The Council recognises that paragraph 11(d) of the NPPF is potentially engaged due to fact that it can only demonstrate a 3.07 year deliverable housing land supply, and that there are therefore significant benefits associated with the delivery of new homes in the urban area, in close proximity to services and facilities, deriving economic benefits during construction and residents spend locally, as well as environmental benefits of reduced reliance on the private car and social benefits a mix of house sizes would offer towards maintaining a mixed and balanced community, however it considers that they are significantly and demonstrably outweighed by the detrimental impacts arising from the poor design of the proposed development; its impact on the distinctiveness, character and appearance of the area; the poor tree-building relationship; the lack of useable outdoor amenity and recreation space; the failure to provide safe vehicle access, support sustainable travel, deliver affordable housing and to meet its drainage needs sustainably.
- 4.5 It has also not yet been demonstrated by the Appellant that the scheme would not give rise to likely significant effects on the integrity of European Sites of Nature Conservation and therefore the adverse impacts would not occur, or that they would be mitigated, therefore the scheme alone and in combination with other plans and projects would cause

unacceptable harm and should be refused.

- 4.5 As noted above, the Council believes the harm significantly and demonstrably outweighs the benefits and therefore the scheme does not achieve sustainable development as defined by the NPPF. Accordingly, the presumption in favour of sustainable development does not apply.
- 4.6 In this case, the Local Planning Authority considers that in the absence of material planning considerations to the contrary, the scheme fails to meet these requirements and will therefore invite the Planning Inspector to dismiss the appeal

James Gilfillan

31 July 2023

**List of documents the LPA intends to rely upon**

National Planning Policy Framework

National Planning Practice Guidance

The National Design Guide

New Forest District Local Plan Part 1: Planning Strategy 2020

New Forest District Local Plan Part 2 (Sites and Development Management DPD) 2014

New Forest District Local Plan Part 1: Core Strategy 2009 (Saved Policies)

Housing design, density and character SPD: 2006 NFDC

Natural England advice on Achieving Nutrient Neutrality for new development in the Solent area. June 2020.

Mitigation for Recreational Impacts on New Forest European Sites SPD 2021 NFDC

New Forest Air Quality SPD 2022.

New Forest Parking Standards SPD 2022.

BSI (2010). BS3998:2010 – Tree Work Recommendations, British Standards Institution, London, UK

BSI (2012). BS5837:2012 – Trees in relation to construction – Recommendations, British Standards Institution, London, UK

Trees and Design Action Group (2021) Trees, Planning and Development. A Guide for Delivery Issue 1.1/2021

Trees and Design Action Group (2010) No Trees, No Future

New Forest District Council (2020) Tree Protection and Development Guidance – New Forest District outside the National Park 2020.

Building Regulations Approved Document H / Building Regulations (H3.(3))

CIRIA C753 SuDS Manual (section 3.2.3)

Fields in Trust Guidance for Outdoor Sport and Play

Hampshire CC Technical Highways Guidance

Hampshire CC Local Transport Plan

Hampshire CC LCWIP guidance

Active Travel England guidance

Any other documents, appeals as appropriate to the case.