
Appeal Decision

Site visit made on 5 January 2015

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 January 2015

Appeal Ref: APP/J1725/A/14/2227762

Former Munitions Store/Cordite Magazine, Britannia Way, Gosport, Hampshire PO12 4FZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Alan Dawes & Mrs Siegrid Dawes against Gosport Borough Council.
 - The application Ref 14/00320/FULL, is dated 20 June 2014.
 - The development proposed is the change of use of the former cordite magazine (B8) use to a single dwelling (C3) including partial demolition and conversion works, and the construction of a new access drive to Britannia Way.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. A third party claimed that ownership certificates for both the application and appeal had been filled in incorrectly. Mr Dawes is the sole applicant listed on the original application form but both Mr and Mrs Dawes are the appellants. It appears that the original application may have been technically incorrectly registered by the Council. But this is understandable because the Council had no knowledge that Mrs Dawes was not also an owner of the land at the time.
3. Mr Dawes served a retrospective notice on Mrs Dawes in relation to Certificate B on 30 December 2014. I also met both Mr and Mrs Dawes at the site visit, so Mrs Dawes is clearly aware of the appeal. She has not therefore been prejudiced by the fact that a Certificate A rather than a Certificate B was mistakenly completed when the application was originally submitted and that she was not therefore formally notified at the time.
4. The Council has put forward putative refusal reasons that include reference to various policies in the emerging new Gosport Borough Local Plan 2011-2029 (GBLP)¹. Although these policies signal emerging policy I attribute little weight to them because the Examination of this new Plan has not yet taken place and I am unaware of the level and nature of objections against them.

Main Issues

5. The main issues in this case are whether the proposal:

¹ Publication Version, July 2014

- (a) is compatible with the site's location in a Site of Interest for Nature Conservation (SINC) including whether it would be likely to harm protected species,
- (b) would lead to the loss of open space in the area,
- (c) would harm the character and appearance of the building, and
- (d) whether there is a justified requirement to provide financial contributions towards off-site open space, designated adjacent nature conservation sites, and highway/transport infrastructure in the area and if so whether this has been provided by a S106 obligation.

Reasons

Nature conservation

6. The site is located in Priddy's Hard SINC, as set out in Policy R/OS12 of the adopted Gosport Borough Local Plan Review 2006 (LP) and its supporting text. This Policy states that development likely to have an adverse effect on such a designated site will not be permitted unless there are reasons which outweigh the need to safeguard the nature conservation value of the site. The appellants have not advanced any such reasons but consider that the proposal would not have any such adverse effects on this SINC and indeed would enhance its biodiversity.
7. The SINC appears to have been designated sometime before the adoption of the LP in 2006 because of the presence of four rare species of flora. In light of the appellants' recent reptile/amphibian survey recording the presence of Great Crested Newts (GCN) and reptiles on or close to the appeal site, the Hampshire Biodiversity Information Centre considers that the presence of these fauna also justifies its designation.
8. The designation of this SINC followed and was part of the wider recent development of this part of Gosport for 700+ dwellings, large areas of open space, for purposes of nature conservation and enhancement, and the preservation of the older former Ministry of Defence military munitions buildings as a heritage centre by the Council about 15-20 years ago. In particular a S299A Agreement dated 24 February 1998 required this building and the adjacent cordite magazine immediately to the south west to be retained and protected from development. In the case of this building this was to provide conditions suitable for the retention and breeding of the Great Crested Newt, and in the case of the adjacent cordite store it was to provide protection for the badger set in that area.
9. I acknowledge the arguments put forward by both the appellants and Council concerning whether or not the building has or has not a lawful Class B8 use, although I am puzzled by the appellants' reference to "*3.7 of the Deed*"² because the S299A Agreement does not contain a section 3.7. However, it is not necessary for me to conclude one way or the other on this matter because a different use is being applied for here. I must assess this on its merits, bearing in mind that priority must be given to nature conservation interests on and adjacent to the site given the stipulations in the 299A Agreement and the SINC designation. I am conscious that the Agreement and the subsequent

² Appellants' Final Comments, paragraph 1.1

Management Plan³(MP) that put its nature conservation priorities into effect was at least partly to mitigate the effect of the 700+ new houses on the local environment.

10. It is noteworthy that public access to this area of the SINC (Area 3 in the MP) is prevented by a 2m high fence, in order to safeguard its biodiversity. The proposal would create a new driveway within the northern boundary of this part of the SINC as well as form a garden area around the (part demolished) cordite store.
11. It is unlikely that the rare species of flora would be found on this part of the SINC, apart from maybe Bluebells, because they are grassland plants more likely to grow nearer the coastal areas rather than in the woodland that surrounds the site. Nonetheless, I cannot see any reference in the appellants' representations as to whether any survey has been conducted to establish the presence or otherwise of these species on the site. This is a significant failing, given the site lies within the SINC.
12. I note from the appellants' second ecology survey⁴ that GCN, a protected species under the Habitat Regulations, have been found in the ditch/moat immediately next to the site. A GCN egg was also found which indicates that GCNs are breeding in this location. I note that this site is probably the only one in the Borough that supports a population of GCNs and the continued presence of GCNs confirms the purpose of designating the site as a SINC. This makes the protection of this area's biodiversity and ecology a key priority.
13. GCNs are known to be mainly terrestrially based although they breed in ponds and other areas of water like the moat adjacent to the site. The areas next to the moat, including areas within the site itself, are likely to be inhabited by GCNs as a consequence. The GCN and Reptile survey suggests that conventional mitigation measures such as protective fencing and translocation if any specimens were found within the site itself would be implemented to ensure the GCN population was protected. It also states that log/rubble piles would be placed in key locations outside the site near to where the GCNs were found in terms of enhancing their habitat.
14. In terms of reptiles, the survey revealed that there is an 'exceptional' population of slow worms on the wider site, including in the appeal site on the northern side of the moat where the new access road is proposed, and also a 'good' population of common lizards. Similar mitigation and (joint) enhancement measures would be applied as for the GCNs.
15. However, I am concerned that little detail has been provided in the appellants' survey as to exactly where on the wider SINC site these species were found and therefore how the proposals may impact on them. Additionally I am unclear where, if any GCNs or reptiles were to be found on the site itself, including the area to the north of the moat intended for the new access drive, where exactly they would be translocated to. I am also unclear whether or not a Green/Brown roof is to be incorporated on the building; this does not appear to be a firm part of the conversion scheme at present. The mitigation appears to include permanent fencing to exclude the future residential occupiers of the

³ Priddy's Hard Nature Conservation Management Plan, Final Report, June 1999

⁴ GCN & Reptile Survey by PJC Ecology, July 2014

- proposed dwelling from trespassing onto the habitat areas adjacent but I have no details of their specification or location.
16. A firmer and more detailed set of mitigation and enhancement measures is necessary. This should include a site plan showing the location of all GCN mitigation and enhancement features including any permanent fencing separating the residential site from the adjacent habitats in this part of the SINC, and a more fully-detailed mitigation strategy to include the timing and methods for all GCN-related mitigation and enhancement works, including ongoing monitoring and management.
 17. I have considered whether such measures could be reserved by a planning condition, but have decided, in view of the rarity of GCNs in the area and the fact that the priority for this wider site is the preservation of a breeding GCN population, that this would be inappropriate. This is backed up by advice in retained Circular 6/2005 (*Biodiversity and Geological Conservation*). I also consider that there is a high nature conservation hurdle to overcome before a residential use can be realistically contemplated on this site. In order to at least preserve, and hopefully enhance biodiversity on the wider site I consider that the above detailed mitigation and enhancement works should also be produced upfront for the affected reptiles.
 18. I have also seen no justification in any of the appellants' representations as to why and how a residential proposal would justify the requirement in the MP that "*management will aim to ensure that areas around both active and inactive* (my underlining) *badger setts remain undisturbed and allow their free passage to all of their foraging territory...*".⁵ As I understand it, there are inactive badger holes on or very close to the site suggesting that it is likely to be used, even if not so used at the time of the survey, by badgers.
 19. The proposed new access drive from Britannia Way would not result in the loss of any significant trees, as acknowledged by the Council. But it would, needlessly in my view, result in the loss of vegetation within the boundary of the SINC. Whilst this area is mainly grass adjacent to the moat's embankment it is possible that this would harm the habitat of the GCNs and indeed the reptiles and badgers. This could be avoided by using the existing hard surfaced path/roadway to the adjacent car parking area, which is outside the SINC boundary and forming an access at or just south of the point marked 'Option 2' on the submitted 1:500 Site Plan.
 20. A residential use of this building is not necessarily incompatible with the site's location in the Priddy's Hard SINC including whether it would be likely to harm protected species. But the onus lies with the appellants to justify not only that the relevant rare flora and fauna have been adequately protected but that biodiversity and nature conservation have been enhanced by the proposal, as they claim. From their submitted representations I cannot conclude that this would be the case.
 21. There is insufficient information for me to conclude that the proposal will not be likely to have an adverse effect on the SINC, and as it stands it is therefore contrary to LP Policy R/OS12, as well as paragraphs 17, 109 and 118 of the National Planning Policy Framework (NPPF). Equally, there is a likelihood, in the absence of such information, that it would have an adverse impact on

⁵ Ibid Page 34, Paragraph 7.3

GCNs, slow worms and badgers and/or their habitats. It would therefore fail to comply with LP Policy R/OS13 as well as the above NPPF paragraphs, which requires such protected species and their habitats not to be harmed.

Open Space

22. As set out above, I attribute little weight to the policies in the emerging GBLP, including draft Policy LP35. Notwithstanding this, the explanation of this Policy in its accompanying text suggests that the open spaces addressed by this Policy are those which facilitate public access, such as but not confined to sports pitches or other areas for public recreation. It also states that a site's ecological characteristics should be taken into account in deciding whether to grant planning permission for new development.
23. The site is open apart from the building itself, the proposal would not make it any less open and it would remain shielded from public view. More importantly, because it forms part of Area 3 of the Priddy's Hard SINC the public are restricted from using it. I cannot therefore see how the proposal would have any significant impact on the use of this 'open space'. I therefore conclude that the proposal would not lead to the loss of open space in the area.

Character of the building

24. The building, a former cordite magazine built around 1900, is not a statutorily listed or even a locally listed building. When many of the other munitions buildings at Priddy's Hard were listed, English Heritage declined to list this one or the adjacent cordite magazine to the south-west. Nonetheless, the Council consider it to be a non-designated heritage asset on the basis of its historical association with the former munitions uses at Priddy's Hard.
25. I agree, because the documentation supplied by the appellants makes clear that this was indeed the case. Its interest lies in the historical development of these relatively later cordite magazines as part of the technological improvements in the developments of explosives for shells from the early years of the late eighteenth century to the later years of the early twentieth century. As such I consider any conversion of this building should take account of and respect the purpose for which it was originally constructed.
26. The appellants state that they wish to retain the steel tracks which supported the cranes or hoists that were used to lift the munitions in the magazine. It is, however, unclear from their plans whether in fact they would be retained.
27. They also wish to demolish approximately the southern third of the building and nearly fully glaze its new southern wall, as well as block up many of the original openings and create a several new ones. Of particular note is the proposed significant widening of the western opening on the north elevation to create a double garage door with a new equally wide window above it for a new store room. Whilst the proposal would create a full size space for the main living area next to the new southern glazed wall the rest of the building would have a first floor, most of which would be unused space above the ground floor rooms' ceilings.
28. These alterations would not respect the original character of the building or its historic use and I consider the design of the new dwelling to be a missed opportunity. In particular, I do not understand why the majority of the full interior height of the building cannot be used in a successful residential

conversion. This would obviate the need for the rather insensitive elevational changes to the existing fenestration, which has an attractive if functional symmetrical appearance. It would also fail to retain the original interior form of the building and thus reference to its original use. The changes proposed would seriously compromise its external appearance as well as fail to retain a feel for the building's historic purpose.

29. I acknowledge the building is hidden from any public view and the proposed changes to it would therefore have a limited visual impact. I also acknowledge that the plan is to convert the building to a Code Level 5 dwelling, which is commendable. Mr Dawes's involvement with Greenbelt Group Ltd, which owns the adjoining SINC land, would also in theory enable him to be involved in the direct day to day management of the adjacent ecological habitat assuming he would live in the new dwelling, which I understand is his intention. Nevertheless, for the reasons set out above I conclude that the proposed conversion would seriously harm its character and appearance.
30. LP Policy R/DP1 requires, amongst other matters, that significant harm is not caused to the historic environment and buildings of local importance. I consider this building to be part of the historic environment of Priddy's Hard and a non-designated heritage asset. For the above reasons the proposal would significantly harm it and it therefore fails to comply with this Policy, as well as paragraph 135 of the NPPF.

Contributions

31. The appellants concede the need to make financial contributions in respect of outdoor playing space and mitigation for the nationally designated sites of nature conservation situated very near the site. The Council has fully justified its requirements for such in its appeal statement and complied with the legal tests set out in Regulation 122 of the *Community Infrastructure Levy Regulations 2010*.
32. The appellants dispute the need for a transport infrastructure contribution because they consider the building has a lawful Class B8 use which would generate more vehicular traffic. I attach little weight to this argument because at present there is no vehicular access to the site. Although the appellants claim that the dropped curb on Britannia Way would allow them to form such an access under permitted development rights, given the uncertainty about whether or not the previous lawful use was extinguished by the S299 Agreement I consider the likelihood of a B8 occupier coming forward in the foreseeable future as highly unlikely. The Council has also successfully justified in its appeal statement its reasons for requiring such a contribution and I therefore consider such a contribution should be paid by the appellants.
33. However, the appellants have not provided a signed and dated S106 planning obligation requiring them to pay any such contributions on commencement of development. It is therefore unclear how such contributions will be provided to the Council.
34. I must therefore conclude that the proposal fails to satisfy the requirements for such contributions set out in LP Policies R/OS8, R/T4, R/DP3 and R/OS13.

Other Matters

35. The Council points out that it has a 5+ years supply of deliverable housing sites and it is not therefore necessary to balance housing need against any harmful impacts of the proposal. The appellant has not challenged the Council's housing supply figures, which appear to be fully justified, and so I agree with the Council's conclusion on this point.

Conclusion

36. For the above reasons, and taking into account all other matters including the numerous objections from statutory and other consultees and from neighbouring residents, I conclude that the proposal would not result in sustainable development in accordance with the NPPF and the appeal should therefore be dismissed.

Nick Fagan

INSPECTOR