The Planning Inspectorate

Appeal Decision

Site visit made on 26 February 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2019

Appeal Ref: APP/Q1255/W/18/3206813
69-77 Rosemary Road, Poole BH12 3HA

- 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 R Atkins, Harlequin Homes against the decision of the Borough of Poole Council.
- The application Ref APP/18/00557/F, dated 19 April 2018, was refused by notice dated 15 June 2018.
- The development proposed is to sever the land and erect 8 dwellings to the rear with associated access and parking.

Decision

1. The appeal is allowed and planning permission is granted to sever the land and erect 8 dwellings to the rear with associated access and parking at 69-77 Rosemary Road, Poole BH12 3HA in accordance with the terms of the application Ref APP/18/00557/F, dated 19 April 2018, subject to the conditions set out in the schedule attached to this decision.

Application for costs

2. An application for costs was made by Mr R Atkins of Harlequin Homes against the Borough of Poole Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Local Planning Authority (LPA) adopted the Poole Local Plan (2018) (the PLP) subsequent to its refusal of the planning application. The PLP replaces both the Poole Core Strategy (2009) and the Poole Site Specific Allocations and Development Management Policies DPD (2012). The LPA has drawn my attention to the new PLP policies which now form the basis of its case in its appeal statement. The appellant has therefore had opportunity to comment and I have therefore proceeded to determine the appeal having regard to the updated Development Plan.

4. During the course of the appeal, the appellant submitted a revised executed Unilateral Undertaking which sought to make financial contributions intended to mitigate the harm that would be likely to arise from the development on European and internationally designated sites. The LPA indicated it was satisfied that such payment would make full mitigation for the likely effects. Nevertheless, having regard to the Conservation of Habitats and Species Regulations 2017 (the HR), I consider it necessary for me to address this matter as a main issue.

Main Issues

5. Given the above, the main issues are

- The effect of the proposed development on highway safety with regard to pedestrian users of Catherine Close and users of the wider highway network.
- Whether the development alone or in combination with other development in the area would be likely to have a significant effect on designated habitats; and if so whether the effects would be capable of being acceptably mitigated.

Reasons

Highway safety

6. Rosemary Road lies towards the western fringes of the built-up area of Poole. In common with several other relatively recent developments and planning permissions, the scheme would comprise the construction of backland residential development, in this case comprising parts of the rear gardens of the five properties comprising 69-77 Rosemary Road.

7. Access to the site is proposed off an existing driveway known as Catherine Close separating 67 and 69 Rosemary Road which serves a recent residential development of five dwellings to the rear of Nos 63-67 to the west. The proposal is to construct 8 dwellings which would, in effect, be a continuation of those dwellings.

8. Whilst I have not been provided with further details, the submitted evidence also indicates that there is an extant planning permission for a single dwelling to the rear of No 69 which would effectively be superseded by the current scheme.

9. Lying at the heart of this issue is the suitability of the Catherine Close driveway to safely accommodate the additional dwellings. The main part of the driveway is straight and, at its junction with Rosemary Road, is sufficiently wide to accommodate two cars along with an area for temporary bin storage on collection days. This storage area would be extended to accommodate the additional refuse required.

10. Thereafter, according to the appellant's figures it becomes single width for a distance of approximately 20 metres. Beyond this, the submitted plans show a passing place before the drive splits to reach the existing and proposed dwellings.

11. The parties are in dispute about the precise dimensions on the ground of the single-width section when taking into account brick piers and rainwater goods overhangs. The LPA also submits that the width shown within the red line on the submitted drawings is somewhat narrower again. Nevertheless, having observed the site and having had regard to the drawings and other submitted evidence, I see no reason to disagree with the appellant that the driveway is sufficiently wide to allow cars and pedestrians to safely pass and would accord with the minimum street layout carriageway with of 3.25m as set out in the Borough of Poole Parking and Highway Layout in Development Supplementary Planning Document (2011).

12. Moreover, given the visibility afforded by the straight alignment of the driveway and the fact that traffic is likely to be travelling at very low speeds, I am not persuaded that, with due care and attention, the proposed access would give rise to any material risk to pedestrians, cyclists or motorists, including those with visual impairment, the less mobile and children.

13. I appreciate the extended bin storage area would, on collection days, narrow the passing space available at the junction with Rosemary Road. However, I have seen no compelling evidence to suggest that this would pose a risk to pedestrians or materially increase the likelihood of vehicles being required to queue or reverse back onto the highway.

14. Concerns have also been raised by interested parties that the development would pose an unacceptable risk to off-site road safety through increased volume of traffic. Whilst my attention has been drawn to traffic collisions having occurred particularly at the junction of Rosemary Road and Brixey Road, I saw that these roads are established through routes and I have no substantive evidence before me to show that the construction of an additional eight dwellings would give rise to any material increase in risk to highway safety.

15. Similarly, I have no good reason to conclude that construction traffic would give rise to undue risk, that adequate access for emergency vehicles would not be available or that visibility splays at the Rosemary Road junction would be inadequate.

16. I note a concern has been raised that the driveway is unlit posing a risk to pedestrians after dark. However, this is a matter which can be addressed through the imposition of a suitable planning condition which I consider below.

17. In conclusion on this main issue therefore, I find that the proposed development would not lead to any materially harmful effect on either the safety of pedestrians using Catherine Close, or on pedestrians and other road users in the wider highway network. It would therefore accord with PLP Policy PP27, PP34, PP35 and PCS26. Together these policies require development to take place in a way which delivers an accessible, safe environment. Whilst the development would not improve safety in line with PLP Policy PP34 d), I am satisfied that this policy is framed as part of a strategic approach to the transport network in the area and I therefore find the proposal would not conflict with it.

18. The LPA also identified a conflict with PLP Policy PP1. However, that policy sets out a presumption in favour of sustainable development broadly in line with the Framework. As I have found the proposal would not be harmful in respect of highway matters, I do not find that any such conflict arises.

Designated Sites

19. The appeal site is within 5km of the Dorset Heaths Special Protection Area (SPA) and the Poole Harbour SPA and Ramsar site. Consequently, it is necessary for me to consider any significant effects that the development may have on those designated sites. The SPAs are protected by the European Habitats Directive and, in turn, through the HR. In the light of a recent judgement of the European Court of Justice (the ECJ judgement)[1], it is

[1] People over Wind, Peter Sweetman V Coillte Teoranta, Case C-323/17

necessary that I firstly consider through a screening exercise whether the development would, alone or in combination with others, have a significant effect on the designated sites; and if so, secondly to undertake an "appropriate assessment" (AA).

20. The significance of the judgement is that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a designated site at the screening stage.

Screening Exercise

21. Dorset's lowland heaths are a special habitat that cover an extensive area fragmented by urban development and other land uses. The heathland ecology is susceptible to harm through the intensification of residential development, in particular through recreational visits by people and their pets, and other activities.

22. Poole Harbour is an internationally recognised habitat for important bird and other species which is similarly vulnerable to damage as a result of the pressures of increased visitor numbers.

23. Accordingly, I consider that an increase in activity associated with occupation of the proposed development would, in combination with other developments in the area, have the potential to have a significant effect on the designated sites. It is therefore necessary for an AA to be undertaken.

Appropriate Assessment

24. Having concluded that AA is necessary, it is appropriate for me to consider any proposed avoidance or mitigation measures. Accordingly, I have had regard, in line with the PLP Policy PP32, to the Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document (DHSPD) and the Poole Harbour Recreation Mitigation Interim Scheme (PHRMIS).

25. Whilst the latter document is not a formally adopted supplementary planning document, it nonetheless provides useful technical guidance consistent with PLP Policy PP32.

26. The DHSPD has been prepared by a partnership of local authorities across Dorset and provides a mechanism to secure mitigation from relevant schemes between 400m and 5km from the SPA for the adverse effects of development on the Heathlands. It adopts a guiding principle that there should be no net increase in urban pressures on the SPA as a result of new development.

27. It operates on the basis that Heathland Infrastructure Projects, predominantly via the provision of Suitable Alternative Natural Greenspace (SANG), should be made through Community Infrastructure Levy (CIL) contributions to divert pressures away from the heathland. However, ongoing Strategic Access Management and Monitoring (SAMM) is also necessary in order to secure full mitigation, and the document sets out a charging schedule to fund appropriate non-infrastructure works through developer contributions in this regard. Such measures include the funding of a core team to provide a co-ordinating role for SAMM, educational activities, wardening, volunteer arrangements and monitoring. It also includes the costs of employing wardens.

28. Turning to the Poole Harbour SPA, the PHRMIS takes a similar partnership approach whereby infrastructure is funded through CIL, with SAMM mitigation being provided through other types of developer contributions. These contributions would fund a combination of surveys and monitoring, a co-ordinator and warden role, SAMM projects and development of an access management/infrastructure plan.

29. In this regard, the appellant has already made payments to the LPA via an executed Agreement under s111 of the Local Government Act 1972. These comprise contributions of £3096 and £1112 for SAMM measures in line with the charging schedules set out in the DHSPD and PHRMIS respectively. The signed Agreement confirms that the payment is for the specific and sole purpose of the above mitigation and the LPA has indicated it is content that the payment that has been made will make full funding provision for the necessary SAMM mitigation measures arising from the development. I am therefore satisfied that the monies will be used for the stated purpose.

30. In line with the requirements of the HR, I have sought the views of Natural England on these matters and it has advised that, in its view, the proposed development would mitigate against the potential recreational impacts of the development n the sites, subject to the appropriate financial contributions being secured.

Conclusions on the effects on Designated Sites

31. Having undertaken the necessary AA and canvassed views from Natural England, I conclude that whilst the development in combination with others would be likely to have a significant effect on the designated sites, the effects would be fully mitigated through the financial contribution which has already been made. On the basis of the evidence, I agree that such mitigation is necessary to make the development acceptable in planning terms. The proposal would therefore accord with PLP Policy PP32 which specifically only permits development where it would not lead to an adverse effect on sites of European and international importance.

Other Matters

32. I have carefully considered a range of other concerns raise by interested parties. Whilst I appreciate that the development would represent an intensification of the use of the land, I am mindful that this is in line with the objectives of the Framework making efficient use of land in urban areas well served by services and facilities. In this case, I note the LPA's view is that the form of development would be consistent with the character and appearance of the area taking into account existing development patterns, and I see no reason to disagree.

33. Similarly, whilst concerns are raised over the proximity of the proposed dwellings to existing dwellings on Kimmeridge Avenue, I note that separation distances are comparable to those which already exist in the area and are such that no unacceptable harm in terms or overlooking or loss of outlook would arise. Moreover, I have no evidence to suggest that the development would give rise to any unacceptable levels of light, noise or pollution.

34. It has been suggested that the site contains formally protected species which would be harmed by the development. However, on the basis of the evidence

available to me, I am unable to conclude that there is a reasonable likelihood of such species being present and affected by the development. In this regard, I note the LPA did not raise any concern and I see no reason to take a different view. I am also mindful that, in any event, such species benefit from statutory protection under separate legislation. I therefore attach little weight to this consideration in determining this appeal.

Conditions

35. The LPA suggested a number of conditions, including the standard implementation condition. I have considered these in the light of the Framework and Planning Practice Guidance and, where necessary, made amendments accordingly.

36. In order to provide certainty a condition is necessary to specify the approved drawings. Furthermore, a condition is necessary to ensure that materials used are appropriate to their context to protect the character and appearance of the area. It would not be necessary for the approval of such details and samples to be required prior to the commencement of development and I have therefore revised the LPA's suggested wording to require these prior to any development above slab level.

37. Also in the interests of the character and appearance of the area, is a condition to secure appropriate landscaping of the site. In this regard, the LPA suggested a condition which included the requirement for a scheme to be approved which included measures both for the protection of existing trees and other site features as well as proposed landscaping. It would not be necessary for the latter aspects to be approved prior to commencement of the development. However, the protection of any existing trees would be necessary before any site works take place. Accordingly, in order to avoid an unduly onerous condition, I have separated the LPA's suggested condition into two conditions although I have omitted reference to 'other site features' as this is not sufficiently precise. The LPA's suggested condition also sought to require maintenance of the landscaping scheme for a period of 5 years as well as the subsequent retention of the works. The requirement to retain such works in perpetuity would be unreasonable and I have therefore omitted it.

38. In order to safeguard the privacy of adjoining properties, a condition is necessary requiring the proposed bathroom windows in the side elevations at first floor in units 1, 3, 4, 6, 7 and 8 to be obscure glazed and retained as such.

39. A condition requiring the LPA's approval of a scheme to secure a minimum of 10% of likely energy use of the dwellings to be generated through on-site renewable energy measures is also necessary. As this may require measures to be installed at the outset of development, it is necessary for this condition to be discharged prior to commencement of the development.

40. In the interests of highway safety a condition is necessary to secure the implementation and retention of the access, turning space and vehicle parking prior to the occupation of the development.

41. In the interests of the safety and security of future occupiers of the development, it is necessary for a scheme of low-rise lighting to illuminate the access drive to be approved by the LPA and subsequently implemented. I do not agree that it is necessary this should be a pre-commencement condition

however, and I have amended the LPA's suggested condition to require details to be approved and implemented prior to occupation of the development.

42. In order to ensure the extended access road provides a safe and suitable access a condition is necessary to require the approval and implementation of plans showing the layout, levels and drainage details of the drive and parking areas. It is necessary for this to be a pre-commencement condition as it includes matters which are integral to the layout of the development.

43. Given the need to provide adequate provision for refuse collection in a way which avoids disruption to the public highway, a condition is also necessary, prior to the occupation of the development requiring the approval and implementation of a Refuse Management Plan.

44. The LPA has also requested a condition requiring, prior to commencement of the development, a Biodiversity Enhancement Plan to be submitted and approved. However, I have been provided with no compelling reasons within the evidence to show that such a measure would be necessary to make the development acceptable in planning terms. Such a condition is therefore not reasonable or necessary and I have omitted it.

45. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions.

Conclusions

46. For the reasons given, the appeal is allowed subject to the imposition of necessary conditions.

Ian Bowen

INSPECTOR

SCHEDULE OF CONDITIONS
APPEAL REF APP/Q1255/W/18/3206813

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) Unless amended by conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 9012/100 Rev D (*'Site Plan, Block Plan, Location Plan and Proposed Streetscene')*, 9012/101 Rev A (*'Plots 1-3 Proposed Floor Plans and Elevations'),* 9012/102 Rev A (*'Plots 4-6 Proposed Floor Plans and Elevations'),* 9012/103 Rev A (*'Plots 7-8 Proposed Floor Plans and Elevations'),* 9012/103 (*'Demolition Plan').*

3) Details and samples of all external facing and roofing materials to be used in the development hereby permitted shall be submitted to, and approved in writing by, the Local Planning Authority prior to any development above slab level. The development shall be carried out in accordance with the approved details.

4) Prior to the commencement of the development hereby permitted, there shall have been submitted to and approved by the Local Planning Authority a scheme for the protection of existing trees on and adjacent to the site, together with a timing for the implementation of the scheme. The scheme shall then be implemented in accordance with the approved scheme and the approved timetable.

5) Prior to the first occupation of any of the dwellings hereby approved, proposals for the landscaping of the site shall be submitted to, and approved in writing by, the Local Planning Authority. The landscaping scheme shall include provision for landscape planting, walls, fencing and other means of enclosure and any changes in levels. Upon approval:

   a) the approved scheme shall be fully implemented with new planting carried out in the first planting and seeding season following occupation of the buildings or the completion of the development whichever is the sooner, or in accordance with a timetable to be agreed in writing with the Local Planning Authority;

   b) all planting shall be carried out in accordance with British Standards, including regard for plant storage and ground conditions at the time of planting;

   c) the scheme shall be properly maintained for a period of 5 years and any plants (including those retained as part of the scheme) which die, are removed or become damaged or diseased within this period shall be replaced in the next planting season with others of a similar size and the same species, unless the Local Planning Authority gives written consent to any variation.

6) Both in the first instance and upon all subsequent occasions, the bathroom windows at first floor in the side elevations of units 1, 3, 4, 6, 7 and 8 on the approved plans shall be glazed with obscure glass in a form sufficient to prevent external views and shall either be a fixed light or hung in such a way as to prevent the effect of obscure glazing being negated by reason of opening.

7) Prior to the commencement of the development hereby permitted, details of the use of on-site renewable energy sources to meet a minimum of 10% of predicted energy use of the residential development, shall be submitted to and approved in writing by the Local Planning Authority and subsequently implemented, retained and maintained.

8) Prior to the first occupation of any of the dwellings hereby approved, the access, turning space, vehicle parking shown on the approved plan shall have been constructed, and these shall thereafter be retained and kept available for those purposes at all times.

9) Prior to the first occupation of any of the dwellings hereby approved, details of a scheme of low-rise lighting along the access drive shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall then be implemented and thereafter retained and maintained to ensure the lighting remains in working order.

10) Prior to the commencement of the development hereby approved, plans and particulars showing the layout, together with details of levels, sections, and drainage of the proposed access drive and parking areas, shall be submitted to, and approved in writing by the Local Planning Authority. The development shall subsequently be implemented in accordance with the agreed details.

11) Prior to the first occupation of any of the dwellings hereby approved, a Refuse Management Plan shall have been submitted to and approved in writing by the local planning authority. The development shall be occupied only in accordance with the approved Refuse Management Plan.