



Appeal Decision

Site visit made on 4 July 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2019

Appeal Ref: APP/Q1255/W/18/3215255

Land adjacent to Derwent, Magna Road, Poole BH21 3AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
 - The appeal is made by Mr K Diment against the decision of Poole Council.
 - The application Ref APP/18/01029/P, dated 28 January 2018, was refused by notice dated 19 October 2018.
 - The development proposed is described on the application form as 'the construction of two two-storey dwellings with associated garages and visitor parking blocks'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. On 1 April 2019 the former Councils of Bournemouth, Christchurch and Poole combined to form a single Authority. Nevertheless, until superseded, the existing development plan documents of the former Councils remain extant. The proposal is in outline with details of access, layout and scale before me (appearance and landscaping being reserved for future consideration, the 'reserved matters'). I have therefore treated any indication of, or potential approach to, the reserved matters as illustrative.
3. Some planning history to the appeal site and its surroundings has a bearing in the present. Nevertheless each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. In this instance the development plan includes policies of the Poole Local Plan (adopted 13 November 2018, the 'LP'), which supersedes the Poole Core Strategy (adopted 19 February 2009, the 'CS').
4. I have also had regard to various material considerations including the National Planning Policy Framework ('NPPF') and the Planning Practice Guidance ('PPG'). In so far as necessary and relevant to this case, there has been appropriate opportunity for comment on that planning context (notwithstanding that the Council reached a decision in respect of application Ref APP/18/01029/P on 19 October 2018).

Main issues

5. Against the context above, the main issues are the effects of the proposal (i) on the openness of the Green Belt and (ii) in respect of ecology. In the event that I find that harm would result by consequence of conflict with the development plan, I will then gauge whether other material considerations in favour of the proposal nevertheless justify allowing the appeal.

Reasons

Green Belt

6. The appeal site falls within the Green Belt around Poole. Relevant NPPF policies apply here by virtue of criterion (6) of LP policy PP2. There is a clear continuity between present and former Green Belt policy at a national level; the essential characteristics of the Green Belt are their openness and permanence. NPPF paragraph 145 sets out, in that context, that the construction of new buildings is inappropriate in the Green Belt. There are no exceptions or qualifiers in respect of market housing, as is proposed in this instance. Consequently the proposal is for inappropriate development in the Green Belt. That is, by definition, harmful and permissible only in very special circumstances.
7. Former CS policy PCS 30 defined the site as part of a wider area of 'safeguarded land' between the urban area of Poole and the Green Belt beyond, intended as contingency for employment uses. Safeguarded land is designated in order to meet longer-term development needs. NPPF paragraph 139 sets out that planning permission for permanent development within safeguarded land should only be granted following a review or update to a plan which proposes the development. That is a critical point. At that juncture the CS sought to make provision for employment land in line with the requirements of the former Regional Strategy. I understand that before the CS the appeal site was neither within safeguarded land nor designated Green Belt (in the Local Plan First Alteration, adopted March 2004).
8. The planning history has some continuing relevance, including in respect of the appellant's contention that previous proposals for development should have been permitted. That is, in his view, as it ultimately became clear that this formerly safeguarded land was no longer required for its intended purpose as originally designated. My understanding is that, at some point historically, potential upgrades to the A31 were also considered here. That appears to account for the geometric shape of land safeguarded in the CS, rather than its correlation with established features (whether natural or man-made).
9. Consequently the LP notes that, following a successful appeal in 2014 for a low carbon employment zone which has subsequently become Magna Park,¹ the 'Green Belt boundary has been realigned to follow permanent features on the ground'. The inspector who determined the 2014 appeal accepted, however, that there was justification for allowing development within safeguarded land. Nevertheless that decision was arrived at in the context of evidence before him regarding the availability and delivery of employment space at that time relative to plan requirements. Paragraph 48 of his decision sets out that 'it is clear to me that for some businesses the limited supply of large-scale employment sites/ premises in Poole and SE Dorset is a barrier to their growth and development.' The development thereby allowed, in type if not timing, was consistent with the purpose of the original designation of the land as safeguarded.
10. The site in respect of the 2014 appeal appears to overlap, in part, the site in respect of planning permission for development including 324 dwellings a short

¹ Ref APP/Q1255/A/13/2204098.

distance towards the south-east of the appeal site (the '2018 permission').² At the time of my site visit a number of homes, at what has been named Canford Paddock, were constructed. Magna Park and Canford Paddock are within LP allocations E2 and U2.

11. Several unsuccessful applications for planning permission have previously been made at the appeal site, including two schemes dismissed at appeal in 2013 and 2016.³ In respect of the 2013 appeal the inspector found 'no justification from the proposed piecemeal departure from [CS] policy PCS 30' that she reasoned the proposal would have entailed. That decision was taken into account in the 2014 appeal referenced earlier in respect of Magna Park.
12. Reflecting the provisions of NPPF paragraph 139, in its previous form in paragraph 85 of the version of the NPPF published in 2012, the inspector in the 2016 appeal reasoned that 'until such time as the designation of the site as part of the safeguarded land is reviewed, there is no justification for releasing it prematurely for the proposed alternative use, regardless of its relatively small size and even if the proposal would not prejudice the employment use of the remaining surrounding land'.⁴
13. The examination of the LP consequently reviewed the extent of safeguarded land in this location and of the Green Belt. The current limits are shown on the policies map (with the supporting rationale in examination documents GB3a and GB3b). For a plan to be found sound, and therefore capable of adoption, it must both be justified, based on proportionate evidence, and consistent with national policy. It is not the role of a planning appeal to re-examine the strategic approach in a plan. Moreover decisions must be taken in the circumstances that exist at the time.⁵ Many projects might have been advanced with the benefit of hindsight which would not now be acceptable.
14. It would not be appropriate, therefore, to assess the proposal as if my determination were made under the policy circumstances that applied prior to the approach in the LP, as suggested by the appellant. However even were I to accept that premise, although the relevant scheme in each instance differs, the acceptability of development here has twice been tested previously at appeal in 2013 and 2016. Setting aside those appeals, the development proposed is residential and therefore at odds with the original rationale for safeguarding land in this location via the former CS. Notwithstanding the 2014 appeal, national policy remains clear that permanent development in such locations is only permissible through a plan review. The planning history is therefore of little significance.
15. The appeal site is a largely level open field of approximately 0.2 hectares used as a paddock. It is to the south of, and accessed directly via Magna Road (A341). There is a dense ribbon of mature trees and established vegetation between it and LP allocations E2/ U2, part of a more or less continuous natural

² Ref APP/17/00008/F, the decision notice for which is dated 28 June 2018.

³ Ref APP/17/01113/P, Ref APP/17/01132/F, APP/12/01127/F subject to appeal Ref APP/Q1255/A/13/2195527 and 15/01501/F subject to appeal Ref APP/Q1255/W/16/3148796.

⁴ Including with specific reference to paragraph 22 of the NPPF published in March 2012, that 'planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose'.

⁵ As referenced in paragraph 1.10.1 of the Planning Inspectorate's Procedural Guidance to Planning appeals – England, published 19 March 2019.

corridor connecting with Canford Heath. That line of trees tracks along a tributary of the river Stour, which follows Knighton Lane on the opposite side of Magna Road. There is also a modest, utilitarian and dilapidated pumping station to the south. That is, to large extent, obscured by surrounding vegetation. Electricity pylons and lines track broadly alongside the line of the trees, albeit that they provide little by way of contextual development given their inherently lightweight form.

16. LP allocations E2/ U2 represent the extent of the established built form of Poole here. The ribbon of trees and vegetation referred to above, in my view, represents a strong physical demarcation to the countryside beyond. Notwithstanding the presence of occasional buildings and facilities between Poole and Canford Magna and Oakley, the appeal site and its immediate surroundings appear rural. They are characterised primarily by good-sized open fields cut by traditional hedgerows punctuated by trees. The topography is gently rolling, which allows for expansive landscape views on occasion. I note that criterion (e) of LP policy PP18 regarding Magna Parks makes reference to the need in this location for a suitable transition to the countryside around the town 'with strong landscaping to provide a permanent Green Belt boundary'.
17. The Council's officer report associated with the application explains that the scheme would be broadly similar to that for three dwellings dated 1 August 2017 advanced in application Ref APP/17/01132/F, albeit with certain alterations to layout and design. There is reference before me to the inclusion of a thirteen metre wide ecology strip along the site's western boundary, as opposed to a five metre buffer as I understand was formerly proposed.
18. Notwithstanding the address given in the banner heading above, the appeal site is separated from the property Derwent by an intervening field. That is used in connection with 'Waggy Tails Rescue', a canine charity. Other fields around the appeal site are also used for grazing and exercising horses in conjunction with Rydal Mount Livery Yard, the buildings of which are in part tucked behind Derwent relative to the A341. There is consequently very little surrounding development to the appeal site. Rather the appeal site sits in a relative low point in the patchwork of fields and paddocks running alongside the tributary. There are presently lengthy views through the appeal site to the landscape beyond.
19. Occasionally trees are dotted alongside the A341. To varying degrees, depending on the time of year, they would provide some natural screening of the proposed dwellings. The visual prominence of the proposal could furthermore be reduced by virtue of a sensitive approach being taken to landscaping as a reserved matter. However, inevitably, landscaping would take some time to mature (and would in itself reduce a sense of openness to some extent). I also acknowledge that the dwellings proposed have been arranged so as to reference a traditional farmyard quadrangle.
20. However in this location vegetation alongside Magna Road is relatively sparse and low-lying. By consequence, and given the surrounding context and topography described above, the appeal site and its surroundings are clearly visible from various public vantage points. The surrounding area is likely to be relatively well frequented by pedestrians. It offers pleasant routes into the rural surroundings to Poole, noting that the Suitable Alternative Natural Greenspace

associated with the neighbouring 2018 permission is close by on the opposite site of Knighton Lane. Change here is therefore likely to be readily apparent.

21. The proposal is for inappropriate development in the Green Belt that would introduce built development and domestic paraphernalia in a relatively prominent location, presently consistent with its surroundings in character and which contributes towards a sense of openness (an essential characteristic of the Green Belt). With little contextual development, recourse to mitigate its visual impacts, or significance of planning history, the proposal would result in a significant adverse effect to the openness of the Green Belt in conflict with the relevant provisions of LP policy PP2 and of the NPPF referenced above. I turn subsequently to whether very special circumstances nevertheless exist.

Ecology

22. The Council's second and third reason for refusal, as set out in their decision notice are interconnected as reasoned below. The appeal site falls close to the Canford Heath Site of Special Scientific Interest ('SSSI'), well within five kilometres (the zone of influence identified in the Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document, adopted January 2016, 'SPD'). That is Poole's largest single fragment of Dorset heathland. The SSSI forms part of the Dorset Heathlands Special Protection Area ('SPA'), Ramsar Site, and of the Dorset Heaths Special Area of Conservation ('SAC'). The SPA and SAC are designated under the Birds and Habitats Directives.⁶ The latter is incorporated into domestic statute via the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations').
23. The SPA is, alongside other flora and fauna, designated in order to safeguard the nightjar population and the habitat upon which they are reliant. I understand the heathland habitat of the SSSI is particularly valuable. Birds can be disturbed by recreational activities, predation from domestic pets, and from habitats being unavailable from time to time by consequence. Whilst not a precise correlation, the potential for adverse effects increases with the number of dwellings nearby. Nightjars feed predominantly outside of daylight hours, as the name suggests, and may travel considerable distance for sustenance (as explained in section 6 of the Habitats Regulation Assessment supporting the LP, the 'HRA'). I also understand that nightjar are on the 'amber' list in terms of UK conservation status, and forage along wetland corridors where they are available.
24. In the abstract, avoidance or mitigation of effects to the SPA and SAC would be achieved by site-specific measures and off-site provision, including by way of Suitable Alternative Natural Greenspace ('SANG'), to redirect those who would have made use of the SPA recreationally, or via contributions towards Strategic Access Management and Monitoring arrangements ('SAMM'). SAMM contributions are established at a strategic level such that development contributes in proportion to its likely effects via the SPD, and also via the Poole Harbour Interim Scheme (published 2 January 2019, pending adoption of a formal planning document).⁷ Whilst the appellant accepts the need for an appropriate contribution towards SAMM, there is no executed deed before me

⁶ 79/409/EEC, 92/43/EEC.

⁷ Outwith the provisions of Regulation 123 of the Community Infrastructure Levy Regulations 2010 as amended.

in that regard.⁸ That brings the proposal presently into conflict with the relevant provisions of LP policy PP32 and NPPF paragraph 170. In summary, and amongst other things, those policies seek to ensure that development appropriately safeguards the natural environment and ecology. Nevertheless that point is not critical.

25. The appellant refers me to correspondence signed with the authority of the Secretary of State related to Environmental Impact Assessment ('EIA') screening in respect of the 2013 appeal. That states that the proposal then was assessed as being likely to have 'some impact to the immediate area however it is not considered to be significant and would not result in effects on the wider environment'. However EIA relates to different statutory provisions to SPA and SAC protection. There are different thresholds for significance and evaluation processes.⁹ That development does not require assessment under EIA does not also mean that likely significant effects on European site can be ruled out, or that Appropriate Assessment ('AA') under the Habitats Regulations is not required. That is particularly as the scale or effects from a single development may be limited, and therefore EIA would not be required individually, however the aggregate or in combination effects of surrounding development taken as a whole could be significant.¹⁰
26. Conversely the appellant argues that, in not undertaking an AA, the Council has failed in its statutory duty in this respect. I disagree. Habitats Regulation 63(1) states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. An AA is not necessary where there is no intention to grant permission, for example where refusal stems from another reason. Moreover, in this particular instance, Natural England, the appropriate nature conservation body under Regulation 63(3) who must be consulted in respect of undertaking an AA, object to the effects of the development proposed on ecology, specifically regarding disturbance to nightjars as referenced above. On that basis it is difficult to envisage how likely effects would have been ruled out via AA; the encouragement in NPPF paragraph 38 of proactive engagement with appellants in decision-taking does not extend to undertaking unnecessary work.
27. With regard to the characteristics of nightjar as described above, Natural England explain how the appeal site is 'functionally linked' to Canford Heath, and that 'there is increasing evidence to suggest that the corridor to the north of Canford Heath is critical and a strategic corridor used by nightjar to enable access to the River Stour and foraging opportunities for the birds.'¹¹ As set out above the ribbon of trees next to the appeal site is part of a more or less continuous natural corridor connecting with Canford Heath. As noted by the inspector in the 2014 appeal, in general terms there is increasing evidence of the value of corridors to ecology (paragraph 53 of his decision). NPPF paragraph 170 also explains the value of 'establishing coherent ecological networks'.

⁸ Pursuant to section 106 of the Town and Country Planning Act 1990 as amended, or otherwise.

⁹ Now the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 pursuant to the Environmental Impact Assessment Directive (2011/92/EU, as amended).

¹⁰ With regard to *People Over Wind and Sweetman v Coillte Teoranta*, Environment – Conservation of natural habitats [2018] EUECJ C-323/17.

¹¹ In correspondence of 17 October 2018 and 21 September 2018.

28. The HRA refers to GPS tracked data originating from 2015 and subsequently reviewed. The sample size in that instance was small, and measurements are subject to some degree of error. Nevertheless that data is presented as showing a preference for nightjar to forage or commute to and from Canford Heath towards the north, albeit using varying routes. On that basis HRA paragraph 6.10 recommended specifically that only housing to the east of Knighton Lane should be subject to allocations in the LP.
29. There appears to be limited empirical data regarding the increasing importance of the corridor of natural land along the tributary of the Stour relative to others. However Canford Heath elsewhere is largely enclosed by surrounding built development. By consequence, and given recent developments nearby including at U2/ E2, it stands to reason that natural and undisturbed foraging areas are of greater importance than they once were. That is reflected in LP paragraph 9.47. The application of a precautionary approach to avoiding likely effects is the appropriate basis on which to proceed (rather than an excessively onerous stance). I am statutorily required to take reasonable steps to conserve and enhance the natural features of SSSI and to conserve biodiversity.¹² The general principal is that the onus is on the appellant to provide sufficient information to enable the determination of an application.¹³
30. However such requirements must be reasonable relative to the nature and scale of the development proposed, and assessment need be no more than proportionate in that context.¹⁴ Ecological assessment work in respect of the 2018 permission established that relatively limited use was made of that site by nightjar.¹⁵ On that basis, and although the planning circumstances differ to here, the development was approved subject to, I am told, a 20 metre buffer zone. Whilst Natural England initially objected to that proposal also, on the face of it a buffer zone of 13 metres proposed here next to two homes, relative to a buffer zone of 20 metres associated with 324 homes appears comparable if not more cautious an approach.¹⁶
31. Similarly I note that condition 4 of the 2014 appeal required the preservation of nightjar flight path corridors. A similar approach would effectively result from the buffer zone proposed here, which could be secured in respect of landscaping as a reserved matter. I note Natural England's concerns regarding the robustness of the appellant's on-site studies. However I understand that from two visual surveys in May and July, and over five nights' acoustic recording, a single nightjar flying around the south of the site was identified. That reinforces my reasoning immediately above, as does the report of 6 October from Artemis Ecological Consulting Ltd., Ref 061018/NE, which explains that, based on the data associated with the 2018 permission referenced above, nightjar already cross Magna Road to reach the Stour. They estimate that such a crossing would take around 12 seconds, or less, and is therefore unlikely to 'present a significant impediment to travel' to 'a species whose annual migration takes them to sub-Saharan Africa'.

¹² Section 28(G) of the Wildlife and Countryside Act 1981, section 40 of the Natural Environment and Rural Communities Act 2000 as amended.

¹³ Section 62 of the Town and Country Planning Act 1990 as amended.

¹⁴ Town and Country Planning Act 1990 as amended, Section 4(A).

¹⁵ There is a Nightjar Survey undertaken by Ecological Planning & Research Ltd., dated October 2015, Ref P12/55 - 4B before me. That may be the same source data as referenced in the HRA.

¹⁶ Notwithstanding the associated SANG referred to in LP policy PP9 accessed close by along Knighton Lane.

32. On the basis of the evidence before me, the limited size of the appeal site relative to Canford Heath, the predominantly undeveloped northern arc of land around it and the distance that nightjar may travel for sustenance, alongside various qualifiers with the prevalence and sensitivity of nightjars to the surrounding environment, the scheme could likely be designed and supported by appropriate contributions so as to avoid likely adverse effects to ecology (in line with LP policies PP32 and PP33, and NPPF paragraph 170). However, even treated at its highest in the event that were to be the case, including via AA reflecting on-site and off-site mitigation, that would be neutral in the planning balance. Notwithstanding the current use of the site, the need for mitigation only arises to offset effects of the development proposed rather than weighing positively in favour of granting permission.

Planning balance

33. I have concluded above that significant detriment to the openness of the Green Belt would result, and reasoned that although at present the scheme does not make appropriate provision for safeguarding ecology that is potentially not insurmountable (and, in any event, not determinative). I now turn to whether very special circumstances exist to justify the appeal.
34. The Council have brought recent linked appeals to my attention in this context.¹⁷ Those decisions explain how Housing Delivery Test ('HDT') data should be considered within reference to phased implementation arrangements in NPPF paragraph 215, and as such the provisions of NPPF paragraph 11 d) would not apply by virtue of the most important policies for determining the application not being out of date. There is no specific challenge to that, or to the Council's position that they are presently able to demonstrate a five year land supply in line with NPPF paragraphs 67 and 73 ('5YLS'). However, setting aside HDT and 5YLS, Green Belt policy is nevertheless a policy referred to in NPPF paragraph 11 d) ii) that may be capable of providing a clear reason for refusing the development proposed.
35. The proposal would have certain benefits. It would result in the provision of two new homes against pressing national needs for such, notwithstanding the local context, with LP policy PP7 'Facilitating a step change in Housing Delivery' not expressly set as a maximum level of provision. There would also be social and economic benefits, amongst others, in supporting employment during construction and as future occupants would make use of nearby services and facilities. Nevertheless the benefits of two new homes would inevitably be modest, particularly relative to the stepped housing target in the LP which varies from 500 to 815 homes annually over the plan period. Neither in the LP nor in the NPPF is the support for new housing is at the expense of ensuring that all integrates appropriately with its surroundings. Moreover the general, or aspatial, benefits of housing provision carry very little weight in support of justifying a particular scheme in the Green Belt.¹⁸
36. Returning to the planning history, I am told that application Ref APP/17/01113/P for office development was not appealed due to advice from the Council that the applicant 'should concentrate on the application for residential use'. The appellant also explains that, albeit informally, the Council

¹⁷ Ref APP/Q1255/W/18/3203055 and APP/Q1255/W/18/3203055

¹⁸ With regard to the Ministerial Statement of 17 December 2015, official record HCWS423.

indicated that residential development emulating a traditional rural form may have been acceptable. Whilst I have noted those points there is no clear record of such engagement before me, and the PPG explains that pre-application advice is not binding as it cannot substitute for a formal decision.¹⁹

37. The appellant contends that it was unacceptable for the Council to have placed such weight on the inclusion of the site within the Green Belt in the LP, as that plan was yet to be adopted at the time the Council took their decision. I disagree. The Council's decision notice is dated 19 October 2018, with the LP adopted less than a month later on 13 November. The LP was therefore at an advanced stage of development and, as set out above, the examination addressed the designation of the appeal site. NPPF paragraph 48 sets out that weight may be given to policies in emerging plans depending on various factors, including their stage of preparation.
38. The appellant has brought a number of planning decisions to my attention for development at Waggy Tails, including its expansion since 2008, latterly via planning permission Ref APP/18/00721/F. Whilst relatively nearby, and whilst the officer report in respect of the latter also addressed the circumstances regarding the then emerging plan and prospective inclusion in the Green Belt, the situation in that instance is very different. Waggy Tails is an established enterprise with various associated buildings. By consequence in the latter permission, the Council reasoned that alterations would not be disproportionate. That contrasts markedly to the effects of a proposal for two new homes in an open field.
39. The benefits of the scheme and other material considerations in favour of the scheme therefore carry only limited weight considered collectively. They therefore fall far short of amounting to very special circumstances necessary to allow the appeal relative to the significant harm that would result. Whilst I have some sympathy with the efforts that the appellant has made over time to advance an acceptable scheme, there is no justification in this instance for allowing development clearly contrary to the development plan and NPPF.

Conclusion

40. For the above reasons, having considered the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

¹⁹ Reference ID: 20-011-20140306.