
Appeal Decision

Site visit made on 19 May 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 20th July 2020.

Appeal Ref: APP/D1265/W/20/3245056
43 Award Road, Ferndown BH21 7NT

- 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 Paul Titterington against the decision of Dorset Council.
 - The application Ref 3/19/1305/FUL, dated 13 June 2019, was refused by notice dated 16 September 2019.
 - The development proposed is to sever land and construct new dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The site is within the influence of the Dorset Heathlands Special Area of Conservation (SPA) and Ramsar site, and the Dorset Heaths Special Area of Conservation (SAC), together referred to as the Dorset Heathlands. During the application process the appellant provided a Unilateral Undertaking (UU) to make a financial contribution towards Strategic Access Management and Monitoring (SAMM) in accordance with the Dorset Heathlands Planning Framework Supplementary Planning Document 2015-2020 (the 2015-2020 SPD) and this contribution was subsequently paid. During the appeal process however, the Dorset Heathlands Planning Framework Supplementary Planning Document 2020-2025 (the revised SPD) was adopted. The revised SPD sets out a strategy for the avoidance and mitigation of impacts of new residential development on the Dorset Heathlands which differs from the previous version of the SPD. The main parties have commented on the implications of the adoption of the revised SPD and Natural England have had the opportunity to comment.

I return to this matter below.

Main Issues

3. The main issues are the effect of the proposed development on the integrity of the Dorset Heathlands; and the living conditions of the occupiers of 43 Award Road in respect of noise disturbance.

Reasons

Dorset Heathlands

4. The Dorset Heathlands are lowland heaths that host protected priority habitats and species of birds and reptiles as well as other typical species of lowland

heathland, wetlands and dunes. The appeal site is more than 400m but less than 5km from the Dorset Heathlands and as such is within a zone where the revised SPD identifies that net additional housing development is likely to have a significant effect (alone or in combination with other developments) on the integrity of the sites. This is due, in particular, to greater urban pressures and disturbance such as recreational access and risk of fires.

5. The Dorset Heathlands are an important recreational resource that are well frequented by the public and it is likely that occupants of the proposed dwelling would visit them. The evidence before me is clear that the proposal, particularly when combined with other development in the area, is likely to have a significant effect on the Dorset Heathlands.
6. Having regard to Circular 06/2005, it is then necessary to consider whether compliance with conditions or other restrictions would enable it to be ascertained that the proposal would not adversely affect the integrity of the Dorset Heathlands. The revised SPD sets out the approach to enabling development through the implementation of measures to avoid likely urban effects on the Dorset Heathlands. It sets out restrictions on development within 400m of the heathlands and mitigation for developments in the area 400m to 5km from the heathland boundary. The mitigation element of the strategy consists of both SAMM and Heathland Infrastructure Projects (HIPs).
7. The 2015-2020 SPD sought to fund HIP provision through the Community Infrastructure Levy (CIL) and SAMM through a financial contribution. On this basis, Natural England did not object to the proposal, however in its comments on the application it stated that if either of the mitigation measures were unable to be secured, it would be likely to amend its response to an objection. Although Natural England was invited to comment on the appeal no response has been received.
8. The revised SPD provides that in most cases, both SAMM and HIPs will be funded through CIL. However, the appellant proposes that the dwelling would be a self-build, which would likely be exempt from CIL payments, a matter which the Council did not specifically consider when conducting its own appropriate assessment or when reaching its decision. Therefore, I cannot be certain that the proposed development would provide funding for SAMM or HIPs through a CIL contribution. Nor is there evidence before me to demonstrate that CIL contributions collected by the Council from other developments would be sufficient to mitigate the effects of this proposal on the Dorset Heathlands.
9. The revised SPD sets out that where not funded by CIL, a contribution of £406 per house and £277 per flat will be required for SAMM. This has been calculated based on the cost of the SAMM mitigation measures for the 5-year period, split between the number of planned homes in the relevant area. The submitted UU provides for a contribution of £263 towards SAMM, which, although apparently correct for the 2015-2020 SPD, would not secure sufficient SAMM funding to comply with the revised SPD.
10. In relation to HIPs, the revised SPD sets out that "Where schemes are exempt from paying CIL, there is likely to be a requirement to provide HIPs through Section 111, Section 106 Agreement or unilateral undertaking"¹. It further identifies that, "Where a planning application which needs a HIP comes forward

¹ Paragraph 5.9

on an unallocated site, the applicant will need to ensure that mitigation is secured, and may not necessarily rely on the Council to secure mitigation through a financial contribution². Despite this, although the appeal site is unallocated, there is no mechanism before me to make any provision to fund or provide HIPs either on or off-site, and there is no substantive evidence before me that no HIPs are required to mitigate the impacts of this development. Consequently, neither the planning obligation or the financial contribution already paid by the appellant can be relied upon to secure sufficient mitigation to ensure that the proposal would not adversely affect the Dorset Heathlands.

11. It would not be appropriate for me to impose a condition requiring the appellant to enter into a planning obligation to secure financial contributions for mitigation because, having regard to the provisions of the Planning Practice Guidance (PPG), there are no exceptional circumstances before me to impose such a condition or evidence that the delivery of the development would otherwise be at serious risk. Moreover, although the required contribution for SAMM is clearly set out in the revised SPD, the requirements for HIPs have to be assessed on a case by case basis. I have no evidence before me of the type or cost of HIPs required to mitigate the impact of this development. I therefore cannot be certain that a condition to require such mitigation would be reasonable or could be precisely worded. It therefore appears to me that there are no conditions which would meet the tests set out in the National Planning Policy Framework (the Framework), which would ensure that the proposal would not adversely affect the integrity of the Dorset Heathlands.
12. Consideration must then be given to whether there are alternative solutions which would have no adverse, or a lesser, effect on the integrity of the Dorset Heathlands whilst still delivering the objective of the development proposal. I have no evidence on such matters, however given that substantial parts of Dorset lie outside of the zone of influence of the Dorset Heathlands, it seems to me very likely that a single dwelling could be delivered on an alternative site without affecting the integrity of the sites. Consequently, as an alternative solution is likely to exist, the Circular indicates that permission for the proposal must not be granted.
13. I conclude that the proposal would pose an unacceptable risk to the integrity of the Dorset Heathlands. The proposal would therefore conflict with Policies ME1 and ME2 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy 2014 (CS) which require development to provide mitigation for the impacts of residential development on protected European and internationally protected heathlands, including as set out in the SPD, and aim to protect, maintain and enhance the condition of all nature conservation sites. Furthermore, it would conflict with the provisions of the Framework to protect and enhance biodiversity.

Living conditions

14. The PPG sets out that in determining noise impacts, account needs to be taken of the acoustic environment and in doing so consider whether or not an adverse effect is likely to occur and whether or not a good standard of amenity can be achieved³. It goes on to advise that the subjective nature of noise means that there is not a simple relationship between noise levels and the

² Paragraph 5.11

³ Paragraph 003 Reference ID: 30-003-20190722

impact on those affected, and that this will depend on how various factors combine in any particular situation⁴.

15. Although my site visit was conducted during a period of travel restrictions due to the Covid-19 pandemic, traffic noise from vehicles on nearby roads was clearly audible when standing in the rear garden. This included vehicles moving along the unmade surface of Award Road, despite their relatively slow speed of travel. Therefore, users of the existing garden currently experience some background traffic noise.
16. The layout proposed would result in vehicles associated with the proposed dwelling travelling along the length of the retained garden for No 43 and activity at the rear from vehicles manoeuvring, loading and unloading and car doors closing. This would inevitably generate some noise which would be heard by those using the garden of No 43. Those vehicles would be much closer to the garden of No 43 than current passing traffic, and the narrow width of the garden would not offer anywhere for users to have respite from the resulting noise other than going inside the dwelling. However, the number of vehicle movements for one dwelling would be low and it is unlikely that there would be someone in the garden every time such activity occurred, or that there would be such activity every time the garden was in use. Furthermore, occupiers and visitors of the proposed dwelling are unlikely to linger in the driveway and the access would be relatively short, therefore the duration of the noise would be brief. Consequently, the proposal is unlikely to generate significant additional traffic noise compared to the existing situation.
17. The level of noise could also be reduced by the choice of boundary treatment and surfacing materials used. In particular, a boundary wall or fence could absorb some noise and deflect some away from the garden towards the open land to the north. While such measures would not completely remove any noise, they would mitigate and reduce the potential impacts to a minimum as required by national and local planning policies. These matters could be secured by appropriately worded planning conditions.
18. Consequently, with appropriate mitigation the impacts of vehicle activity from the proposed dwelling on those using the garden of No 43 would be unlikely to be intrusive or disruptive for users of the retained garden or to result in changes in behaviour. Therefore, the proposal would not result in significant adverse effects on the living conditions of the occupiers of 43 Award Road in respect of noise disturbance.
19. Accordingly, the proposal would not conflict with Policy HE2 of the CS which requires development to be compatible with its surroundings including, amongst other things, in its relationship to nearby properties. Neither would it conflict with the requirement of Framework paragraph 127 to create places with a high standard of amenity for existing and future users.

Planning Balance and Conclusion

20. The proposal would contribute to housing supply in an area where the Council cannot currently demonstrate a 5-year supply of housing land. It is promoted by the appellant as a self-build dwelling, for which there is support in the Framework. However, no information has been provided on the identified need

⁴ Paragraph: 006 Reference ID: 30-006-20190722

for self-build plots in the area, or the extent to which such need is being met. Consequently, while all contributions to housing supply are valuable, given the small scale of the proposal the benefits of only one additional dwelling carry limited weight.

21. I have found that the proposal would pose an unacceptable risk to the integrity of the Dorset Heathlands and as such would conflict with CS Policies that seek to protect and enhance biodiversity. Those policies are consistent with the provisions of the Framework in respect of biodiversity and internationally protected sites. As such, having regard to Framework paragraph 213, although the policies are more than 5 years old I afford the conflict with them very substantial weight.
22. I have also found that the proposal would not significantly adversely affect the living conditions of occupiers of No 43. It would also comply with other requirements of the development plan to provide sufficient parking, outside space and to protect trees which contribute to the character and appearance of the area, and would not demonstrably harm the living conditions of the occupiers of No 41, or harm the adjacent Green Belt. These are however neutral impacts which do not weigh in favour of the development. Consequently, the proposal would conflict with the development plan as a whole.
23. Although the proposal would boost housing supply and make more efficient use of a small site in a built-up area, as supported by the Framework, it would not avoid, mitigate or compensate for significant harm to biodiversity as required by Framework paragraph 175a). In such circumstances, the Framework directs that planning permission should be refused. Therefore, in accordance with footnote 6 of the Framework, the presumption in favour of sustainable development in paragraph 11 is not engaged.
24. Overall, taking account of the Framework and the above considerations, including the benefits of the proposed development, I conclude that there are no material considerations that would indicate that the decision should be taken otherwise than in accordance with the development plan. Therefore, the appeal is dismissed.

L McKay

INSPECTOR