



Appeal Decision

Site visit made 2 June 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/D1265/W/19/3242683

**Land adjoining Jubilee Farm, Burts Lane, Mannington, Wimborne, Dorset
BH21 7JX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr P Bascombe against the decision of Dorset Council.
 - The application, dated 10 September 2019¹, sought approval of details pursuant to a condition imposed by Article 3(1) of The Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO') and Regulation 75 of The Conservation of Habitats and Species Regulations 2017 on a planning permission subject to Prior Approval Ref 3/19/1460/PNAGD, granted by the GPDO after Dorset Council failed to give notice of its decision on an application for prior approval under Schedule 2, Part 3, Class Q of the GPDO dated 3 July 2019.
 - The application was refused by notice dated 5 November 2019.
 - The development proposed is the change of use of agricultural building to a dwellinghouse (Class C3), and for associated operational development.
 - The details for which approval is sought are: approval under Regulation 77 of the Conservation of Habitats and Species Regulations 2017.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs have been made by Mr P Bascombe against Dorset Council and Natural England. These applications are the subject of a separate decision.

Procedural matters

3. The site address is expressed in a number of ways throughout the appeal documents. I have used the address as set out on the appeal form.
4. Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015 and Regulation 75 of The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') make it a condition of any planning permission granted by a general development order that any development which is likely to have a significant effect on a European site must not be begun until the developer has received written notification of the approval of the local planning authority under Regulation 77.

¹ Made by email from Eminence Grice Ltd (on behalf of Mr Bascombe) to Dorset Council

5. Regulation 77 requires that, for the purposes of its consideration of such an application, the local planning authority must assume that the development is likely to have a relevant effect, must consult the appropriate nature conservation body and must take account of any representations made by it. The appropriate nature conservation body in this case is Natural England (NE).
6. Regulation 77 goes on to set out that the local planning authority must, taking account of any representations made by NE, make an appropriate assessment of the implications of the development for the European site in view of that site's conservation objectives. Finally, Regulation 77(7) stipulates that in light of the conclusions of that assessment, the local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.
7. As the competent authority in respect of this appeal, I have conducted my determination within the framework of appropriate assessment under the Habitats Regulations. Therefore, my reasoning below sets out my appropriate assessment and my conclusion, following Regulation 77(7), flows from that. As part of that assessment, I have consulted with NE, and sought the further views of the appellant on their response which I have taken into account in reaching my decision.
8. The European sites in question are the Dorset Heathlands Special Protection Area, the Dorset Heathlands Ramsar and the Dorset Heaths Special Area of Conservation, referred to hereinafter as 'the European sites'.

Main Issue

9. The main issue is the effect of the development on the integrity of the European sites.

Reasons

10. The European sites collectively include a number of disjointed areas of lowland heaths across South East Dorset. They host protected priority habitats and species. The qualifying features include Dartford warblers, nightjars, woodlark, hen harrier, merlin, sand lizards and smooth snakes as well as other typical species of lowland heathland, wetlands and dunes.
11. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document ('SPD') sets out that an increase in residential development across South East Dorset is placing pressure upon the protected heathland areas, the integrity of the European sites and their qualifying features, from the activities of new occupants living in close proximity to them. The SPD goes on to explain that such pressures include predation from domestic pets, pollution from surface water, enrichment from dog excrement, trampling of vegetation and soil erosion from walkers, and increases in the frequency of damaging fires.
12. The SPD, following development plan policy, sets out a two-pronged approach of preventing residential development within an area defined by a 400m straight line distance from the European sites and requiring mitigation in accordance with the SPD in an area between 400m and 5km.
13. Throughout consideration of the application, NE maintained that the site was within the 400m zone. However, in a direct consultation response to me, they

have clarified that this is not the case. In this regard, as suggested by the appellant, I am content that it would be possible to use a planning obligation to secure boundary features to prevent the 400m zone being used by future residents of the site for purposes ancillary to the residential use. Such would ensure that the dwelling, its curtilage and access remained outside the 400m zone in perpetuity. The resulting development would be comparable to examples set out in the SPD, Appendix C, which indicates that a proposal in such an arrangement would be allowed, subject to the mitigation detailed in the SPD.

14. The mitigation detailed in the SPD includes various heathland infrastructure projects funded through the Community Infrastructure Levy and contributions to strategic access management and monitoring measures (SAMM) through individual planning obligations such as has been provided by the appellant. Indeed, SPD Appendix F specifically indicates that for permitted development proposals such as this, the need for mitigation can be 'overcome' in this way.
15. The SPD indicates that that its policies, and those of the development plan, which include setting the 400m zone, are based upon robust scientific evidence. Therefore, the policy formation is likely to have considered matters such as changing occupancy characteristics over the lifetime of development and that domestic cats may have territories that range up to 1km from their host dwellings. Although the examples in SPD Appendix C are urban in nature, the SPD does not differentiate between urban and rural settings.
16. However, whilst I have had regard to the foregoing, the SPD is not a project specific appropriate assessment as required by the Habitats Regulations. As set out in Planning Practice Guidance² (PPG) an appropriate assessment must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project on the European sites.
17. Moreover, whilst the SPD provides a mechanism for securing strategic mitigation outside the 400m zone and effectively places an embargo on development within it, it does not set out that outside the 400m zone, development is automatically acceptable. The effect of the Habitats Regulations is that project specific appropriate assessment is always required taking account of the specific circumstances of the case.
18. In this case, the site is only marginally outside the 400m zone and there is a nearby public footpath leading directly to Holt Heath, part of the designated European sites. Although the walking distance, estimated as 806m by the appellant, is not direct access to the heathland, the distance is unlikely to deter access by residents for recreational purposes that may include dog walking and the like. Such activities are indicated in the SPD as causing harm to the integrity of the European sites. At my site visit, I noted that the footpath did not appear entirely clear, and the entrance to it from the road was partially obscured and somewhat overgrown. However, there is no substantive evidence that it is not available for use.
19. This relatively short and easy access to the European sites by foot would facilitate future occupants use of the heathlands for recreation. Such would make it distinct from another case at nearby Meadow View, permitted by the

² Paragraph ID 65-003-20190722

Council³, where comparable ease of access has not been demonstrated. Furthermore, NE have confirmed in their response to me that Holt Heath has a very low level of access management. Therefore, whilst there may be numerous strands to SAMM that can take place remote from the heathland in question, the ability to effectively educate future occupiers of the site through SAMM related measures is limited.

20. NE, in the same response, has also reinforced the principle that measures seeking to mitigate harmful effects must be locationally related to the part of the designated site adversely affected. With regard to the limited existing management measures at Holt Heath and without any evidence of planned investment, together with the ease of access from the proposed dwelling to this part of the European sites, it is likely that the proposal would have a particular, unmitigated adverse effect on this area.
21. I can appreciate the appellant's position that NE's latest response appears to conflate mitigation requirements for strategic planned development and the need to mitigate the cumulative effect from small multiple proposals in a coordinated manner. I understand that the appellant is frustrated that these matters were not set out in detail by NE until the appeal stage. However, I must nevertheless take them into account in conducting my appropriate assessment.
22. The foregoing indicates that there are a number of reasons why the development subject to this appeal could lead to specific localised effects on the European sites. Although the proposal would appear to comply with the SPD, this is no substitute for a project level appropriate assessment. Moreover, I have no detailed analysis or scientific evidence to counter the specific concerns of NE as the appropriate Nature Conservation Body.
23. Therefore, following appropriate assessment and adopting a precautionary approach, I am unable to conclude that the proposal would not lead to significant adverse effects on the integrity of the European sites, alone or in combination with other development.

Conclusion

24. For the reasons given above, the appeal is dismissed.

M Bale

INSPECTOR

³ LPA Ref. 3/14/1214/PMBPA