



Appeal Decision

Site visit made on 5 October 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2020

Appeal Ref: APP/L3815/W/19/3243595

Dolphins, Rookwood Lane, West Wittering PO20 8QH

- 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 George Chapman against the decision of Chichester District Council.
 - The application Ref WW/18/02708/DOM, dated 14 October 2018, was refused by notice dated 26 November 2019.
 - The development proposed is steps down through garden to a 1.5 metre long tunnel beneath public footpath rising through another set of steps to the foreshore garden.
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Decision

1. The appeal is allowed and planning permission is granted for steps down through garden to a 1.5 metre long tunnel beneath public footpath rising through to another set of steps to the foreshore garden at Dolphins, Rookwood Lane, West Wittering PO20 8QH in accordance with the terms of the application, Ref WW/18/02708/DOM, dated 14 October 2018, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr George Chapman against the decision of Chichester District Council. This application is the subject of a separate Decision.

Procedural matter

3. The description of development comes from the application form. Reference therein to the foreshore garden is for descriptive purposes and its use in my decision does not clarify, grant permission for, or signify agreement to any use of that land in a particular way.

Main Issues

4. The main issues are:
 - (i) The effect of the development on the character and appearance of the area, with particular regard to the landscape and scenic beauty of the Chichester Harbour AONB (the AONB); and
 - (ii) the effect on European Sites designated for their nature conservation importance.

Reasons

Character and appearance

5. Dolphins is located at the edge of Chichester Harbour within the AONB. Land owned by the appellant extends toward the foreshore, bisected by a public footpath. Towards the footpath, on both sides, the land rises up to a bank, but the footpath itself is lower than the immediately adjoining land. Although the tunnel would be an overtly man-made structure, the relative levels and intervening planting would prevent views of it from the footpath.
6. Viewed from the gardens and rear windows of Dolphins and its neighbours, the tunnel entrance would be seen in the side face of the bank within the residential garden environment. In this domestic context it would do no harm to the character and appearance of the area or outlook from these dwellings.
7. On the opposite side of the footpath, the tunnel would lead to land open to the Harbour. The tunnel mouth would be within the top of the bank rather than its side face so it would not be readily visible to anybody on the water, or walking on the foreshore, which are at an appreciably lower level. Views may be possible from higher vessels within the harbour, but there is no substantive evidence that they would come close enough to the shore to have clear views of the tunnel mouth.
8. The plans indicate that a handrail would protrude a short distance above the ground level. However, irrespective of the use of the land between the footpath and the water and any associated paraphernalia, against the landscape backdrop of the harbourside and alongside an existing timber jetty, this small protrusion would be barely noticeable. It would not harm the character and appearance of the area, unique blend of land and sea or sense of wilderness in the seascape that give the AONB its special qualities.
9. The proposal would require a pump to evacuate rainwater, but there is no substantive evidence that it could not be sufficiently quiet or sited so as to avoid noise disturbance to the tranquil area. Full details of its specification, including times of operation, could be secured by planning condition.
10. Policy 43 of the Chichester Local Plan 2014-2029 (LP) allows development affecting the AONB where it can be demonstrated that the natural beauty and locally distinctive features of the AONB are conserved and enhanced; that proposals reinforce and respond to, rather than detract from, the distinctive character and special qualities of the AONB; and that the predominantly open and undeveloped, rural character is preserved. These aims are consistent with the requirements of the National Planning Policy Framework (the Framework) that require great weight to be given to conserving and enhancing landscape and scenic beauty, and the statutory purpose of the AONB to conserve and enhance the natural beauty of the area.
11. Policy 43 also requires compliance with the policy aims of the Chichester Harbour AONB Management Plan (MP). Like the LP Policy, these include the conservation and enhancement of the landscape and its special qualities, preservation of tranquillity, protection from inappropriate development and avoidance of the dominance of manmade influences. Whilst there are policies in the MP that seek to avoid facilitating access to the Harbour, the proposal would only alter an existing arrangement, so there would be no intensification of

activity on the land between the footpath and shore as a consequence. There is also no substantive evidence that use by unsupervised pets would increase.

12. I, therefore, find that the proposal would not conflict with the aims of LP Policy 43. Nor would there be any conflict with the similar aims of LP Policy 44 relating to development around the coast. Policy 44 also requires consideration of various other factors including navigation, opportunities to make improvements to footpaths, and mooring facilities. There is no substantive evidence that the consideration of these interests would result in identifiable harm, so there is no conflict with Policy 44 read as a whole.

European Sites

13. The development and effects of construction activities could lead to adverse impacts on the integrity of the Chichester Harbour Site of Special Scientific Interest (SSSI), which is also designated as the Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar, and the Solent Maritime Special Area of Conservation (SAC) (collectively the European Sites). Appropriate assessment under the Conservation of Habitats and Species Regulations 2017 is, therefore, required. This I have undertaken on a proportionate basis, with regard to the Preliminary Ecological Assessment (PEA)¹, the Council's own appropriate assessment, views of the Parish Council and other representations, and the various consultation responses received by the Council from Natural England.
14. Chichester Harbour is a large estuarine basin that is of particular significance for wintering wildfowl and waders and also breeding birds. The Chichester Harbour sites are designated for their support to a variety of species including Dark-bellied brent goose, Common shelduck, Eurasian wigeon, Eurasian teal, northern pintail, Northern shoveler, Red-breasted merganser, Ringed plover, Grey plover, Sanderling, Dunlin, Bar-tailed godwit, Eurasian curlew, Common redshank, Ruddy turnstone, Sandwich tern, Common tern and Little tern.
15. Qualifying features of the Solent Maritime SAC include sandbanks and estuaries, mudflats, coastal lagoons, annual vegetation of drift lines, perennial vegetation of stony banks, and various associated species. The conservation objectives of the European Sites include ensuring that the integrity of the sites are maintained or restored as appropriate, that the sites contribute to achieving the aims of the Wild Birds Directive and favourable conservation status of their qualifying features.
16. Although the character of the foreshore may have historically been wild, the Phase 1 Habitat Survey within the PEA indicates that around the proposed tunnel, the land is closely mown grassland with introduced shrub and scattered trees. With regard to the cumulative impacts of other development that may have gone on at and around the site, the Council and Natural England are satisfied that the site of the tunnel has not been vegetated shingle or intertidal habitat since at least 1991, which predates designation of the SAC and SPA. There is no clear evidence to suggest that Natural England's position may have been influenced by (rightly or wrongly) considering the land to be residential garden.

¹ Arbtech (September 2018) Preliminary Ecological Appraisal Survey. Dolphins, Rookwood Lane, West Wittering, Chichester, West Sussex PO20 8QH

17. Therefore, irrespective of the use of the land and even if the tunnel were considered to be within the European Sites designation, the proposal would not lead to any adverse effect as a consequence of direct loss of habitat, alone, or in combination with other development.
18. Nevertheless, the proposal could lead to a decrease in survival rates and populations of wintering birds due to an increase in dust, noise, visual disturbance and water quality impacts caused during the construction of the project. Mitigation measures described within the PEA to control construction activities and times through a Construction Environmental Management Plan (CEMP) are, therefore, required. Such can be secured through planning conditions and do not require a planning obligation or other legal agreement to make them enforceable.
19. With a CEMP in place, the proposal would not, in itself, lead to harm to the integrity of the European Sites. It would be an independent operation to anything else that may have gone on at and around the site or within the zone of influence of the European Sites. There is no substantive evidence that any use by unsupervised pets would increase and I have already found that human activity within European Sites would not increase as a consequence. As such, no in combination effects would result.
20. Following appropriate assessment I, therefore, conclude that the proposal, alone and in combination with other development, would have no adverse impact on the integrity of the European Sites. For the same reasons there would be no harm to the SSSI.
21. The above conclusion indicates that there would be no conflict with those aims of Policy 43, Policy 49 or Policy 50 that seek to ensure that development is appropriate to the environmental wellbeing of the area, and protects biodiversity interests, particularly those relating to birds in the Chichester and Langstone Harbours Special Protection Areas.

Other matters

22. The occupiers of Dolphins already have access to the foreshore via gates either side of the footpath. There is no substantive evidence that this arrangement is inherently unsafe or unsuitable and in that regard there is no need for the proposal. However, a lack of need does not render the development unacceptable.
23. I understand that the emerging West Wittering Neighbourhood Plan includes a policy resisting the urbanisation and domestication of the foreshore. As I have found no harm to the character and appearance of the area, there would be no conflict with that policy. There has been some suggestion that the proposal would conflict with LP Policy 45 which restricts development in the countryside. However, as it would be well related to the existing dwellings, not prejudice agricultural operations and have minimal impact on the landscape and rural character, I find no such conflict.
24. The environment agency has confirmed that there would be no adverse effects on Flood Risk. I note the numerous concerns expressed about historic development and activity at the site, and those relating to the use of the land. Although it was necessary to take account of other activities in conducting my appropriate assessment, it is not otherwise my role in this appeal to assess

these matters and my findings do not prejudice any future consideration of them. For the reasons given, I have found the proposal acceptable on its own merits.

25. A number of other properties in the area also have areas close to the foreshore within their ownership. Whilst I have found that no harm would result in the case of the present proposal, this does not mean that other similar proposals would necessarily be acceptable. I, therefore, attach very little weight to the risk that some form of precedent could be established.

Conditions

26. A plans condition is necessary in the interests of certainty. To provide mitigation against adverse impacts upon the European Sites, a CEMP is required. I have amalgamated this with the Council's recommended conditions regarding compliance with the PEA and timing of works, in the interests of clarity. A landscaping condition is necessary to clarify finished levels and treatment in the interests of the character and appearance of the area and scenic beauty of the AONB. For the same reason, a condition is necessary regarding any tunnel lighting.
27. Conditions are necessary to secure details of the pump to preserve tranquillity. The Council recommended a condition relating to the installation of a gate or barrier within the tunnel to control pet movement. However, I am uncertain about how it could be enforced so as to achieve these aims. For these reasons and as the conclusions of my appropriate assessment were not dependent on such measures, I have not imposed it.
28. I have made minor changes to the recommended conditions in the interests of clarity and to ensure compliance with the Framework and Planning Practice Guidance.

Conclusion

29. With regard to the above, I conclude that the appeal should be allowed.

M Bale

INSPECTOR

Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Paper 3, Paper 4, Paper 7, Paper 8, Paper 10, Paper 10a, Paper 11.
- 3) No development shall commence, until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved CEMP shall be implemented and adhered to throughout the entire construction period unless any alternative is agreed in writing by the Local Planning Authority. The CEMP shall provide details of the following:
 - (a) How the recommendations within the Preliminary Ecological Appraisal Survey (Arbtech, September 2018) shall be incorporated throughout the construction period;
 - (b) The timing of works such that construction activity must not be carried out in the months of October to February, inclusive;
 - (c) the anticipated number, frequency and types of vehicles used during construction;
 - (d) the provision made for the parking of vehicles by contractors, site operatives and visitors;
 - (e) the loading and unloading of plant, materials and waste;
 - (f) the storage of plant and materials used in construction of the development;
 - (g) the erection and maintenance of security hoarding; and
 - (h) waste management including prohibiting burning.
- 4) No development shall commence until full details/specifications of the proposed pump including its noise levels and times of operation shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter, the pump shall only be implemented and operated in accordance with the agreed details and retained and maintained as agreed in perpetuity.
- 5) No development shall commence until full details of the hard and soft landscaping, together with a timetable for its implementation, has been submitted to and agreed in writing by the Local Planning Authority.

The details shall include:

 - (a) A scaled site plan indicating the planting scheme for the site showing the schedule of any plants and positions, species, plant sizes (at time of planting) and proposed numbers/densities;
 - (b) details of finished ground levels;
 - (c) details of all existing trees and hedgerows on the land including details of any to be retained, together with measures for their protection during the course of the development.
 - (d) provision for the conservation and enhancement of biodiversity on the application site in accordance with recommendations set out in

the Preliminary Ecological Appraisal Survey (Arbtech, September 2018);

- (e) details of any proposed hard landscaping showing any hard surfaces and their positions, materials and finishes.

The works shall be carried out in full accordance with the approved details and timetable and in accordance with the recommendations of the appropriate British Standards or other recognised codes of good practice.

Any trees or plants which, within a period of 5 years after planting, are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved unless otherwise first agreed in writing by the Local Planning Authority.

- 6) Prior to its installation, full details of any lighting for the tunnel together with details of its operation and timings in which it can be used shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the lighting shall be installed and operated only in accordance with the agreed details and no other lighting shall be installed on the site.