



Appeal Decision

Site Visit made on 1 February 2021

by L McKay MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2021

Appeal Ref: APP/V1260/W/20/3256427

70 Magna Road, Bournemouth BH11 9NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr G House (Nylo Homes Ltd) against Bournemouth Christchurch and Poole Council.
 - The application Ref APP/20/00122/F, is dated 25 January 2020.
 - The development proposed is demolition of the existing building and construction of a replacement comprising a commercial unit (for use class A1 or D1 purposes) and three apartments together with associated parking, access and landscaping.
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Decision

1. The appeal is dismissed and permission is refused for demolition of the existing building and construction of a replacement comprising a commercial unit (for use class A1 or D1 purposes) and three apartments together with associated parking, access and landscaping.

Preliminary Matters

2. The application form gives the appeal site address as Poole, however the appeal form refers to it being in Bournemouth, which is supported by the postcode. I have therefore amended the address above to reflect this.
3. On 1 September 2020 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, which amend the Town and Country Planning (Use Classes) Order 1987 in various ways, including incorporating Use Classes A1 and D1 into a new Class E. Paragraph 4 of the Regulations provides that applications submitted before 1 September 2020 which referred to uses or use classes which applied before that date must be determined by reference to those uses or use classes. I have decided the appeal accordingly.

Background and Main Issues

4. The Council advises that had it been in a position to determine the application, it would have refused permission for a number of reasons. Nine reasons are listed at the end of the Council's Officer Report however additional issues are raised within the text of that report, including impacts on bats, which I return to below.
5. The Council withdrew putative reasons 8 and 9 following submission of a legal agreement to secure financial contributions towards mitigation of impacts of the proposal on the Dorset Heathlands Special Protection Area (SPA) and Ramsar Site, Dorset Heaths Special Area of Conservation (SAC), Poole Harbour

SPA and Ramsar site (the habitats sites). Nevertheless, I have a statutory duty to consider the effect of the proposal on the integrity of these sites and I therefore deal with this matter below.

6. Therefore, the main issues are:

- i) whether the appeal site is an appropriate location for the proposed development having regard to local and national policies on the location of commercial uses;
- ii) the effect of the proposed development on the living conditions of occupiers of neighbouring properties in respect of noise disturbance, pollution, outlook, light and privacy;
- iii) whether the proposal would provide satisfactory living conditions for future occupants in respect of noise disturbance and pollution;
- iv) the effect of the proposed development on highway safety; and
- v) the effect of the proposed development on the character and appearance of the area, including trees.

Reasons

Location

- 7. Policy PP22 of the Poole Local Plan (LP) sets out the Council's strategy for retail and main town centre uses, which seeks to direct such proposals to appropriate locations as set out in the LP retail hierarchy. The appeal site is not within the town centre, any district or local centre or neighbourhood parade. Outside these designated boundaries or any allocated sites in the LP, Policy PP22(4) permits new retail development and main town centre uses only where specified criteria are met. The National Planning Policy Framework (the Framework) requires that a sequential test be applied to proposals for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan.
- 8. While there is already a retail use on the site, the proposal is for an entirely new building and would result in a substantially larger commercial unit than the existing shop. A flexible use is proposed, such that the commercial unit could be in Class A1 retail use or a Class D1 use such as a veterinary surgery but excluding a nursery and other specified D1 uses. Should permission be granted on that basis, other uses would then be permitted by the new Class E. Consequently, the proposal would be significantly and materially different in scale and character to the existing provision. Therefore, the proposal would result in either a new retail development or a new main town centre use in this location.
- 9. In such circumstances Policy PP22(4)(a) requires that the proposal satisfies the sequential test as required by the Framework. The appellant has not carried out any assessment of whether there are other suitable and available sites in town centres or edge of centre locations or in accordance with the LP retail hierarchy. As such, the sequential test is not satisfied.
- 10. In respect of the other criteria of Policy PP22, I consider the impact of the scale, role, function and nature of the proposal below. It is not in a retail park and as such criterion (c) is not relevant, however as the proposal may not be a

local convenience food shop, it would not meet a demonstrable need as required by criterion (d).

11. Accordingly, the proposal would conflict with LP Policy 22 and the Framework. Therefore, the appeal site is not an appropriate location for the proposed development having regard to local and national policies on the location of commercial uses.

Living conditions – neighbouring and future occupiers: noise disturbance and pollution

12. The existing shop offers a relatively small range of goods due to its size, therefore it is likely that it provides top-up shopping for local residents and passers-by rather than being a destination that people would specifically travel to. In contrast, the larger commercial unit now proposed would be able to offer a much wider range of goods if occupied for retail, or a range of other uses. As such, it would potentially attract customers from a much wider area, who may drive rather than walk or cycle to the site. Consequently, it is likely to generate significantly more activity than the existing premises.
13. The site is on a main distributor road and as such is not a particularly quiet environment, and neighbours will already experience some level of noise disturbance from the existing parking area. I am also mindful that there is no evidence before me that the operating hours of the existing shop are restricted by a planning condition or other means.
14. Nonetheless, the increased scale of the proposal and consequent activity would result in additional noise disturbance from vehicles arriving, leaving and manoeuvring, doors opening and shutting, deliveries and collections and people coming in and out of the unit. This would result in more immediate and closer noise impacts for neighbours than are currently generated by passing traffic, and greater activity on the site frontage. As such it would particularly affect 72 Magna Road and 1 Lea Way, which are closest to the site. Even with the existing noise environment the additional activity associated with the proposal would be likely to result in a significant and harmful increase in noise disturbance to those properties, to the detriment of the living conditions of the occupiers.
15. The proposed car park layout would require delivery and collection vehicles to park within the site, blocking some of the proposed parking spaces, or on nearby roads. This is likely to result in either displaced customer parking or delivery and collection vehicles parked close to neighbouring properties, most likely in Lea Way given the restrictions and cycleways on Magna Road. That residential road is relatively narrow and quiet and additional on-street parking, even for short periods, would introduce additional noise disturbance to properties in Lea Way, harming the living conditions of the occupiers.
16. The appellant suggests that delivery hours would be limited to 7am to 7pm, however no hours of opening are specified. Restricting delivery hours to daytimes would limit noise at unneighbourly times but would not address the impacts of customer activities. Given the range of potential uses of the proposed unit, it would not be reasonable for me to impose specific opening hours as I cannot be certain that they would suit potential users, and could therefore reduce the potential for the unit to be occupied. As such, it has not been demonstrated that the harm identified could be satisfactorily mitigated.

17. Access to the proposed commercial unit would be via double doors to the side. Therefore, although the scheme has been amended to remove the delivery cage store from the rear garden, deliveries and staff arriving and leaving would still need to pass alongside No 1. Even if the hours of such commercial activities were restricted, transporting goods along the access is likely to result in noise disturbance in close proximity to the facing windows of No 1, which would be very noticeable and intrusive to the occupiers even during the daytime. Moreover, access to the proposed flats and cycle store would also be from the side accessway, which could generate activity at all times of the day and night, as residents' comings and goings could not reasonably be subject to any controls.
18. The proposed bin store would be sited away from No 1 at an angle and in the existing parking area, but nevertheless would add further activity to this area. While on its own this may not result in significant noise disturbance, in combination with the other layout and design factors set out above, the proposal would result in a significant increase in activity and noise disturbance in close proximity to No 1 compared to the existing situation, and consequently would significantly harm the living conditions of the occupiers.
19. Given the size of the proposed unit mechanical ventilation, artificial cooling or refrigeration may be needed, requiring installation of plant and equipment. Due to the proximity of the proposed building to Nos 1 and 72 and the location of the windows of the proposed flats, any equipment on the exterior of the building would be likely to generate noise, vibration and emissions which could impact on the living conditions of neighbouring and future occupiers.
20. The submitted drawings do not indicate where such items could be located, nor has it been demonstrated that they could be provided within the unit. Therefore, I cannot be certain that plant or equipment could be accommodated within the proposed scheme without detriment to the living conditions of the occupiers of existing and proposed dwellings. As it has not been demonstrated that an acceptable technical solution would be available, it would not be reasonable to impose a condition requiring details to be submitted at a later date.
21. External lighting within the site could be controlled by condition and in most areas could be designed to minimise effects on neighbours. However, it is highly likely that some form of lighting would be needed for the entrance to the proposed flats, close to the facing windows of No 1. Any lighting in that area, even if on a timer or motion-sensitive, would be intrusive. This could be partially mitigated by use of a higher boundary treatment but that would restrict light and outlook from those windows, which although obscure glazed are nevertheless an important source of light to the affected habitable rooms. Therefore, it would not be appropriate to require such measures by condition. Consequently, the proposal would also harm the living conditions of the occupiers of No 1 through artificial light pollution.
22. The proposed parking spaces would occupy broadly the same area as the existing unmarked parking area, and boundary treatments such as the existing hedge around No 1 could be retained. Three spaces are proposed facing No 1, rather than at an angle as they are currently, however additional landscaping is proposed along this boundary, which would mitigate the impact of headlights. Therefore, the impacts of artificial light intrusion and emissions from increased

vehicular activity on neighbours are unlikely to be significantly different to the existing situation and do not warrant refusal.

23. Accordingly, the proposal would harm the living conditions of neighbouring occupiers in respect of noise disturbance and pollution, and it has not been demonstrated that it would provide satisfactory living conditions for future occupiers in the same respects. It would therefore conflict with LP Policy PP27 insofar as it requires development to be compatible with surrounding uses and not result in a harmful impact on amenity considering levels of noise and vibration, emissions and artificial light intrusion.
24. I recognise that commercial units sit alongside residential developments in many locations, such as those referenced by the appellant. I do not however know the circumstances under which those developments were permitted, whether they have had any adverse impacts, or whether they are subject to restrictions to mitigate potential harm to neighbours. It has not therefore been demonstrated that their impacts on neighbours are comparable to the scheme before me, and they do not justify the harm identified.

Living conditions – neighbouring occupiers: outlook, light and privacy

25. The existing single-storey structures alongside No 1 would be removed and the proposed building would not extend as far forward as the existing building. However, the proposed two-storey section would be significantly closer to No 1 than at present and would extend further to the rear, across some of the facing windows. The proposed single-storey part would then extend across the other facing windows at only a few metres distance.
26. The evidence before me is that those windows provide light to habitable rooms in No 1 and although obscure glazed, their current aspect over the low fence and garden of the appeal site is largely open, therefore they contribute to the quality of internal accommodation and the living conditions of the occupiers. Although set slightly off the boundary, the scale, massing and bulk of the proposed building would make it an oppressive and overbearing feature in views from No 1. Any sense of outlook from that side of the dwelling would be lost, and the height and proximity of the proposed building would also severely restrict daylight to the facing windows and as such affect conditions in the rooms they serve. Consequently, the proposal would harm the living conditions of the occupiers of No 1 in respect of outlook and light.
27. The proposal would extend significantly further to the rear of No 72 than the existing building and be set close to the boundary, with much of the rear projection two storeys high and even the single-storey part considerably higher than the existing boundary fence. Due to its siting it would not significantly affect light to the rear habitable room windows of No 72. However, because of its height, bulk and proximity, the proposed building would create a strong sense of enclosure and be a dominant, intrusive and overbearing feature in views from the rear of No 72 and its garden, despite the separation created by the existing car port. Therefore, it would significantly adversely affect the outlook from that property and, as such, the living conditions of the occupiers.
28. The use of the proposed garden and cycle store and day-to-day comings and goings associated with the proposed commercial unit and flats would result in more frequent activity in the rear part of the site than is likely to occur from the use of the garden by the existing flat. However, domestic activity and

outbuildings are not unusual in such areas and as such would not significantly adversely affect the privacy of Nos 1a and 3 who adjoin this garden space. However, it would result in more frequent movements past the windows of No 1 than at present, where structures along the boundary prevent such through movement. Although people could not see directly into the windows, such movements would be noticeable and intrusive from inside No 1 and would significantly diminish the privacy of the occupants.

29. The proposed first-floor side windows would offer views of Nos 1 and 72 and their gardens. These would however be bathroom or secondary windows and as such could be obscure glazed to mitigate this harm, without detriment to the living conditions of future occupiers of the proposed flats. Some mutual overlooking is to be expected in a residential area and as such any remaining sense of perceived overlooking would not be sufficient to warrant refusal.
30. The bedroom window of Flat 1 would face Nos 1a and 3 to the rear and be significantly closer than the existing first-floor window. Views from it into the side window of No 1a would be screened by the proposed cycle store, but it would offer direct and elevated views down towards the small rear garden of that dwelling, which is currently not closely overlooked by any neighbours. The proposal would therefore significantly increase overlooking of this space, harmfully reducing the privacy of the occupants.
31. The facing window of No 3 is largely screened by fencing and with appropriate boundary treatments or landscaping the proposal would not materially increase overlooking of that dwelling. The proposed bedroom window would also provide a view over the rear part of the garden of No 72, however this can already be achieved from the existing window and as such would not harmfully increase overlooking of that property.
32. The windows of the proposed first-floor office/store could be obscure glazed to prevent overlooking of neighbours, without detriment to the useability of this space. Activity in this room may still result in a perception of overlooking due to the size and number of windows, however office use is less likely to take place during evenings and weekends when neighbouring gardens would be used more often, while a storage use would probably generate visits of only short duration. As such, this element of the proposal would not significantly adversely affect the privacy of neighbours.
33. Accordingly, the proposal would harm the living conditions of neighbouring occupiers in respect of outlook, light and privacy. As such, the proposal would conflict with LP Policy PP27 insofar as it seeks to prevent development which is overbearing or oppressive or which has harmful impacts on amenity in respect of privacy and light.

Highway safety

34. The proposal would provide 13 parking spaces, with 3 proposed for residents' use. The demand for car parking would vary depending on the end use, which is reflected in the different standards set out in the Council's Parking and Highway Layout in Development Supplementary Planning Document (SPD). The proposal would not meet the optimum parking standards if the commercial unit were in either A1 food or non-food use but may for some D1 uses. However, I cannot assume that the unit would be used for a non-A1 use and

must consider the potential it would be occupied for the highest parking demand use, a food retail unit.

35. The pattern of use of a convenience store is likely to generate shorter trips compared to a larger supermarket, which would fall within the same category of use, however it is also likely to have a high turnover and more frequent customers. As such it has not been demonstrated that it would require less parking than the standards recommend, and that the amount of parking proposed would meet the needs of a convenience store.
36. Moreover, the proposed layout shows that the proposed entrance porch and bollards would be very close to spaces 5 and 6, with the proposed canopy projecting behind those spaces. This would significantly restrict the ability to manoeuvre into and out of those spaces and reduce their useability. Consequently, due to the number and layout of spaces, it has not been demonstrated that the proposed car parking provision would be sufficient to meet the needs of the proposed development.
37. The evidence before me is that local bus routes are infrequent and with limited operating times, so may not provide a realistic alternative to the car. Furthermore, while resident and staff cycle parking is proposed, it would be accessed down a gated narrow path which would be difficult to get a bicycle down. No provision is made for customer cycle parking and the proposed layout does not allow for additional provision without further loss of car parking. Consequently, the proposal would do little to encourage customers to use non-car transport in order to offset the need for car parking.
38. Residents' spaces could be clearly marked to prevent customer parking, and some of the other spaces could be used by residents and their visitors at quiet times. However, there is potential for demand to exceed the supply of spaces at times, for example evenings and weekends when residents' parking demand would be higher and a convenience store might expect to be busy. Accordingly, at times it is likely that customers and delivery and collection vehicles would seek to park nearby. While the appellant's parking survey suggests there is sufficient parking nearby, it is not clear which areas were surveyed or where spaces were identified. I can therefore give it very limited weight.
39. Parking on Magna Road would adversely affect the free flow of traffic on this busy route, and the use of the cycle lanes. As the closest side road Lea Way is likely to attract short-term parking. It is a narrow road already subject to some on-street parking, and the gradient reduces forward visibility. While there may be capacity for additional parking, this would significantly reduce passing opportunities, requiring vehicles to reverse either down the hill with poor visibility or towards Magna Road. Given the restricted road width, any parking close to or opposite driveways would cause difficulties for existing residents trying to enter or exit their properties. As such, parking in Lea Way would also prejudice highway safety. Wood Lane offers more on-street parking but is over 100m from the site and uphill, and therefore would be less attractive to customers.
40. Without suitable available alternative parking, or simply for convenience, customers might wait on Magna Road to get into the car park while other customers leave. Alternatively, they might drive onto the site and find no useable spaces available, leading to difficult manoeuvring on site or reversing onto Magna Road. Both situations would lead to unacceptable risks to highway

safety. These situations are likely to occur more frequently than at present, as the larger store would be likely to attract more customers and the current in-out arrangement of two accesses would not be available.

41. The siting of the proposed access closer to the pedestrian crossing than at present would not in itself be likely to harm highway safety, as there would be good visibility for vehicles on the road, using the access and for people using the crossing. However, the proposed layout would encourage pedestrians to walk from the crossing through the vehicular access and across the car park, as the narrow path proposed behind spaces 6 to 10 would not provide a car-free route to the entrance door because space 6 would be in the way. It would also be unsuitable for some users who require a wider path. The layout of spaces 5 and 6 would also create a significant hazard for people leaving the unit, as the solid walls of the proposed porch would prevent them seeing cars, and prevent drivers seeing the customers, until they exited the building.
42. Combined with the removal of the bollard which currently separates pedestrians from the vehicular access, this layout would significantly increase the potential for conflict between pedestrians and vehicles entering, exiting and manoeuvring around the site compared to the existing situation. As such, the proposal would not provide safe access for pedestrians.
43. Moreover, large vehicles such as those for collections and deliveries are unlikely to be able to turn on site and as such those parking on site would either need to reverse into the site or out on to Magna Road. This would further compromise highway safety compared to the existing situation where vehicles can drive in and out in a forward gear using both accesses. While potentially deliveries could be planned for quieter times, there is no evidence before me of when these would occur, or whether they would accord with the appellant's suggested delivery hours. As such, this harm cannot be mitigated by use of a planning condition.
44. In addition, the proposal makes no provision for disabled parking and would not therefore address the needs of people with disabilities. While this could potentially be accommodated through changes to the site layout, no such scheme is before me. Such provision is likely to further reduce parking provision or the already very limited landscaping needed to soften the impact of the proposed hardstanding, resulting in further harmful impacts.
45. For the above reasons, the under-provision of parking and the proposed access and layout would lead to unacceptable impacts on highway safety, would not provide safe routes for all users or encourage use of sustainable transport modes. Accordingly, the proposal would conflict with LP Policies PP27 and PP35 which require good design that, amongst other things, creates attractive, safe and accessible places and routes, and safe access to the highway.
46. Furthermore, it would conflict with the National Planning Policy Framework (the Framework) which requires development to ensure safe and suitable access for all users, take up appropriate opportunities to promote sustainable transport modes and seeks to avoid unacceptable impacts on highway safety.
47. The appellant suggests very few pedestrian movements occur at present, however depending on its use the proposal could attract considerably more, and in any event should be designed to encourage customers to walk to the site rather than to use a car. The appellant's alternative of an unmarked

parking area would be likely to reduce capacity as people may not park as close together or at different angles, further increasing the potential for conflicting traffic movements and the need to manoeuvre within the site. As such, this would not be an acceptable solution to the identified harm.

48. The proposed parking provision may be comparable to other premises in the area, however I have no details about the circumstances that led to them being approved or whether the SPD was in place at the time. I therefore cannot be certain they are comparable to the scheme before me, which I have considered on its own merits. The appellant suggests that the Highway Authority is consulting on new maximum parking standards, however as they have not been provided, I cannot have regard to them in this decision.

Character and appearance

49. The appeal site is in a predominantly residential area of mostly two-storey detached dwellings set well back from the road with trees and greenery in front, giving the area a spacious, verdant character. The existing building is similar in age to many surrounding properties and its hipped roof and steep pitched front gable give it a distinctive appearance reflected in No 1 but different to many neighbouring properties, which are of varied design. Three protected Oak trees (T1, T3, T4) along the site frontage are part of a row of mature trees along Magna Road which create an avenue and make a significant positive contribution to the character and appearance of the area.
50. The proposed building would be set back from the road a similar distance to most properties along Magna Road and have a similar overall form to many other dwellings in the area, with hipped roof and front gable. It would also use similar materials, other than around the ground floor front windows and door, however these contemporary design elements would not be out of place given the mixed designs in the locality. The proposed ridge would be broadly the same height as that of the existing building but due to its width, depth and height, the proposal would be substantially larger in scale and massing. It would occupy almost the full width of the plot and the depth would be clearly apparent in the gaps between the site and Nos 1 and 72, meaning that the substantial crown roof would also be appreciated. The single storey rear element would also be visible from Lea Way between Nos 1 and 1a.
51. Consequently, the proposal would be very prominent in this highly visible location and would overwhelm the smaller scale of neighbouring dwellings. While there are some larger properties in the area and some difference to reflect the mixed commercial/residential nature of the building might be expected, the scale and massing of the proposal would not reflect or enhance local patterns of development and would harmfully diminish the spacious character of the area.
52. Tree T3 is proposed to be removed on health grounds, as signs of disease are present. Its location at the end of the pedestrian crossing and set forward of others in the row mean it has significant amenity value despite its condition, which would be lost under this proposal. The appellant proposes a replacement in broadly the same location. Sufficient root volume for a large tree could potentially be provided under the parking spaces, however due to the limited size of the proposed planting bed there is potential for surface roots to disrupt the hardsurface of the car park in due course. Therefore, an Oak or similar large species may not be appropriate in this location. A smaller tree would

continue the line along Magna Road, however it would be very unlikely to have the presence and amenity value of T3 and the remaining large trees in this row. As such, it has not been demonstrated that the proposed layout could accommodate a tree of sufficient size to offset the impact of the loss of T3 on the character and appearance of the area.

53. The Council's Tree Officer suggests several replacements be planted, however 4 smaller trees are unlikely to have a comparable impact on the street-scene to a tree the size of T3, and in any event it is unclear where they could be planted, given that most of the site would be taken up with the proposed building or hardstanding.
54. Accordingly, the loss of tree T3 would harm the character and appearance of the area, and it has not been demonstrated that this can be offset by suitable replacement planting. It would not be reasonable to require details of new tree(s) by condition, as I am not satisfied that an acceptable solution could be achieved within the limitations of the proposed layout.
55. I recognise that T3 is likely to need removal in the short to medium-term due to its condition. However, it would have to be replaced irrespective of any other development coming forward on the site, and it seems to me that the informal layout of the existing site offers more scope to create space for a replacement than the appeal proposal. Therefore, the proposed development is not the only means by which the impact of its loss on the character and appearance of the area could be mitigated.
56. Construction of the proposed building, bin store and hardstanding has the potential to damage other trees on the site and in front of No 72, however most of these areas are already affected by hardsurfaces. Therefore, this could be addressed by use of appropriate working methods, secured by condition.
57. The Council raises concerns that additional traffic associated with the proposed commercial unit would intrude into the residential character of the area. However, the site is already part commercial and on a busy road, therefore although the additional traffic and activity would impact on neighbours for the reasons above, they would not change the nature of the site to the extent that it altered the character of the surrounding area.
58. Overall, therefore, due to the scale and massing of the proposed building and the loss of T3, the proposal would harm the character and appearance of the area, and that harm could not be satisfactorily mitigated by conditions. The proposal would therefore conflict with LP Policy PP27 insofar as it requires a good standard of design including in relation to patterns of development, scale, bulk and massing, natural features and trees.

Other Matters

Habitats sites

59. The appeal site lies within the zone of influence of the Dorset Heathlands, an extensive network of lowland heath recognised for their national and international importance for nature conservation; and Poole Harbour, designated for the important bird species that inhabit the area, including internationally important populations of regularly occurring species and migratory species, an internationally important assemblage of waterfowl, and supporting habitats. These habitats sites are under significant pressure from

urbanising impacts and damage from recreational use, which have the potential to cause ongoing adverse effects on the protected habitats and species.

60. The proposal would increase the number of dwellings and likely residents on site, who would be likely to visit the Dorset Heathlands and Poole Harbour due to their relative proximity. As such, either alone or in combination with other development in the area, the proposal is likely to have a significant effect on the integrity of the habitats sites due to increased disturbance through recreational activity. It is therefore necessary for me, as the competent authority, to conduct an Appropriate Assessment.
61. To address the impacts of new housing the Council has adopted the Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (SPD) and the Poole Harbour Recreation 2019-2024 SPD, both of which have been drawn up with advice from Natural England. The SPDs set out mitigation strategies consisting of Strategic Access Management and Monitoring (SAMM) and Heathland Infrastructure Projects (HIPs) for the Dorset Heathlands and SAMM and Poole Harbour Infrastructure Projects (PHIP) for Poole Harbour. In both cases the SPDs seek to secure SAMM through a legal agreement and HIPs and PHIPs would be funded by Community Infrastructure Levy (CIL) contributions. LP Policy PP39 allows such contributions to be secured by S106 or S111 agreements.
62. The Council has confirmed that the appellant has submitted a s111 agreement and paid the required contribution for SAMM for both the Dorset Heathlands and Poole Harbour in line with the SPDs. There is no evidence before me that the proposal would be exempt from CIL contributions. Therefore, measures have been secured to mitigate against harm to the Dorset Heathlands and Poole Harbour, and the proposal would not adversely affect the integrity of the habitats sites. I therefore find no conflict with the LP or the Framework in this respect.

Protected species

63. The appellant's ecology report identifies the main building contains a brown long-eared bat roost, and that it and the garage may have limited potential to support hibernating bats. It states further surveys are required however there is no evidence before me that they have been undertaken. Nor have the trees that would be affected by the proposal been surveyed in detail.
64. Circular 06/2005 is clear that it is essential that the extent to which protected species may be affected by a proposed development is established before planning permission is granted. In this case further information is needed to establish an accurate representation of the use of the buildings by bats to inform a comprehensive bat mitigation and compensation strategy. The 'worst case' strategy set out by the appellant's ecologist as a way around the absence of survey information may not therefore be appropriate to address the impacts of this development. Having regard to the Circular, it would not be appropriate to secure such information by conditions.
65. Given my findings on other issues in this appeal I have not pursued this further with the parties. Nevertheless, there would be a need for further investigation in the event of another application being submitted.

Planning Balance and Conclusion

66. The evidence before me is that the Council's delivery of housing was substantially below the housing requirement over the last 3 years. Having regard to Framework footnote 7, the policies most important for determining the appeal are therefore considered out-of-date and the presumption in favour of sustainable development in Framework paragraph 11d) is engaged.
67. For the reasons set out above, the proposal would conflict with the LP in respect of the location of the commercial unit and would harm the character and appearance of the area, living conditions and highway safety. The relevant LP policies are consistent with the Framework approach to design, safe access and highway safety, and I therefore afford the conflict with them great weight.
68. The proposal would result in a net gain of 2 dwellings in a reasonably accessible location in an existing settlement. I also give substantial weight to the value of making efficient use of previously developed land (PDL). Although only a small increase in housing numbers, given the housing supply situation I therefore afford the benefits of two dwellings in this location modest weight.
69. The Framework places significant weight on the need to support economic growth, which the proposal would contribute towards. Although the appellant suggests they would seek a convenience store operator first before considering other uses, there is no mechanism to ensure this. Therefore, I cannot be certain to what extent the end use of the proposed unit would serve the local population. Furthermore, although I recognise the constraints of the existing shop, there is little evidence before me that it is not viable in its present form, as it was trading at the time of my visit and there is no detailed viability information before me. Even if it were not viable for its current use, the flexibility offered by Class E means it could potentially be used for other purposes without planning permission, and there is no evidence before me that these options have been investigated. Therefore, I give the economic benefits of the scheme moderate weight.
70. The proposal could include biodiversity enhancements however these would be relatively small and as such carry limited weight.
71. The proposal would therefore benefit from Framework support for boosting housing supply on PDL and economic growth but would conflict with Framework policies on the location of retail and main town centre uses, high quality design and highway safety, which are of considerable importance. Consequently, overall, I find that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
72. Overall, there are no material considerations, including the benefits of the proposal and the Framework, that justify granting planning permission contrary to the development plan. The appeal is therefore dismissed and planning permission for the proposal is refused.

L McKay

INSPECTOR