



Appeal Decision

Site Visit made on 16 November 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th November 2021

Appeal Ref: APP/V1260/W/21/3278438

47 Longfleet Road, Poole BH15 2HW

- 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 PNM Construction Limited against Bournemouth Christchurch and Poole Council.
 - The application Ref APP/21/00702/F, is dated 27 April 2021.
 - The development proposed is change of use and extension of the property to form a large 9 bed HMO (sui generis).
-

Decision

1. The appeal is dismissed and planning permission for change of use and extension of the property to form a large 9 bed HMO (sui generis) is refused.

Applications for costs

2. An application for costs was made by PNM Construction Limited against Bournemouth Christchurch and Poole Council. This application is the subject of a separate Decision.

Preliminary Matters

3. After the appeal was submitted, the Council granted planning permission on 1 September 2021, for an almost identical proposal under reference APP/21/01059/F (hereinafter referred to as the extant planning permission).

Main Issues

4. The appeal arises from the Council's failure to make a decision on the application. As part of the appeal process, the Council has submitted a statement setting out that, without a financial contribution towards mitigating measures, the increased occupancy of the building, resulting from the development, would adversely impact on the Dorset Heathland Special Protection Area (SPA), the Dorset Heaths Special Area of Conservation (SAC), and the Poole Harbour SPA. If mitigating measures had been secured through a financial contribution, Officers would have recommended the application for approval, subject to conditions.
5. Based on this statement, the representations from interested parties, my site visit, the extant planning permission, and all the other evidence before me, I consider that the main issue is the impact of the development on the integrity of the Dorset Heathland SPA, the Dorset Heaths SAC, and the Poole Harbour SPA (the European Sites).

Reasons

6. The Court of Justice of the European Union has ruled¹ that, when considering the effect that a development proposal may have on European Sites, the decision maker must consider any proposed mitigation through an Appropriate Assessment (AA), rather than at the screening stage. That responsibility now falls to me in determining this appeal.
7. The Conservation of Habitats and Species Regulations 2017 as amended, require that permission for development may only be granted after it has been ascertained that it will not affect the integrity of European Sites. The appeal site lies within 5km of the Dorset Heathlands SPA and the Dorset Heaths SAC. The site is also within easy reach of the Poole Harbour SPA. Evidence shows that these protected sites are under significant pressure from an increase in the level of recreation, and disturbance of bird species, because of population growth resulting from residential and tourism development.
8. The development would result in a net increase of three bedrooms within the Zone of Influence of the European Sites. In the light of the evidence before me, when considered alone or cumulatively with other schemes, I cannot rule out that the additional residents would have significant effects on the integrity of the European Sites, due to the resultant increase in recreational activity.
9. The Dorset Heathlands Planning Framework Strategy Supplementary Planning Document (2020) sets out that mitigation for the impacts of development on this European Site will be delivered through a combination of Heathland Infrastructure Projects (HIPs), and Strategic Access Management and Monitoring (SAMM). The HIPs will be funded by the Council using Community Infrastructure Levy receipts, whereas SAMM funding will be through individual contributions from all developments that involve an increase in residents. In the case of Poole Harbour SPA, the mitigation strategy is set out in the Poole Harbour Recreation 2019 – 2024 Supplementary Planning Document. Mitigation for additional recreational impacts is provided through SAMM funding via individual contributions from developments.
10. The appellant does not dispute that the SAMM contributions are necessary to satisfy an AA. In relation to the extant planning permission, the required contributions were made to the Council, in accordance with the terms of an Undertaking under Section 111 of the Local Government Act 1972. The appellant has stated that, in view of the extant permission, it is not now intended to provide a legal agreement in respect of the appeal proposal. If I were to allow the appeal, the appellant would have the option of implementing the resultant planning permission, rather than the extant permission. Under these circumstances, the Council would have to return the contributions made under the Section 111 Undertaking. Consequently, no mitigation would be secured for the adverse impacts of the development.
11. For these reasons, following AA and adopting a precautionary approach, I am unable to conclude that the development would not affect the integrity of the European Sites. The proposal would therefore be contrary to Policy PP32 of the Local Plan, which seeks to ensure that development does not lead to adverse effects upon the integrity, either alone or in-combination, of internationally important sites.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

Conclusion

12. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR