
Appeal Decision

Hearing Held on 9 November 2021

Site Visits made on 8 & 9 November 2021

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/D1265/W/21/3272399

Land south of Leigh Road, Wimborne, Dorset BH21 2DA

- 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 Barratt David Wilson Homes Southampton against the decision of Dorset Council.
 - The application Ref 3/19/2449/FUL, dated 11 June 2019, was refused by notice dated 5 October 2020.
 - The development proposed is to replace approved retail unit (not commenced) with 64 bed care home with associated access, car parking, foul and surface water drainage and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted to Replace approved retail unit (not commenced) with 64 bed care home with associated access, car parking, foul and surface water drainage and landscaping at Land south of Leigh Road, Wimborne, BH21 2DA in accordance with the terms of the application, Ref 3/19/2449/FUL, dated 11 June 2019, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. I undertook an unaccompanied site inspection on the day before the hearing in order to familiarise myself with the site and its surroundings. Following the close of the hearing, I undertook a further site inspection in order to clarify matters discussed during the hearing. With the agreement of the main parties, this further site inspection was also unaccompanied.

Main Issues

3. The main issues are:
 - i) Whether the loss of the approved retail use/local centre has been sufficiently justified,
 - ii) The effect on the character and appearance of the area, and
 - iii) The effect on the Dorset Heathland Site of Special Scientific Interest.

Reasons

Loss of the approved retail use/local centre

4. The appeal site comprises a roughly triangular area of land, located to the eastern fringe of Wimborne. It borders residential dwellings to the south, which are part of a recent development undertaken pursuant to a large allocation for a new neighbourhood to the south of Leigh Road within the Christchurch and East Dorset Local Plan, Part 1 – Core Strategy (adopted 2014) (the Core Strategy). Policy WMC8 of the Core Strategy sets out that around 75 hectares of land is allocated for this new neighbourhood, which will include 350 new homes, a Sports Village, new allotments, a local centre providing for day-to-day needs, land for a school and land for a country park.
5. The appeal scheme seeks to replace the approved retail unit with a care home and, as a result, would conflict with the requirements of policy WMC8, insofar as it requires the delivery of a local centre to provide for day-to-day needs.
6. In order to demonstrate that the construction of a retail unit at this location would not be viable, the appellant has undertaken a marketing exercise in order to ascertain the level of interest in the retail market. Marketing of the unit began in March 2018, with a “soft” marketing exercise, which then moved to “full” marketing in June 2018. This included the erection of a marketing board at the site, preparation of sales particulars and their distribution directly to convenience store operators, local commercial property agents and specialist local centre developers.
7. Following this, a further round of marketing was undertaken in September and October 2018, which further widened the scope of the marketing to include complementary uses. The marketing continued during the course of the planning application, which was determined in October 2020.
8. Subsequent to the marketing outlined above, it was considered that while direct marketing had been undertaken, there was a deficiency in online marketing through property websites. Additional marketing was then also undertaken, focussing on internet advertising. The submitted information shows that there have been a number of enquiries in respect of the site.
9. Despite these queries, an operator for the retail unit has not come forward. The Statement of Common Ground submitted outlines that it is accepted between the parties that the marketing exercise has demonstrated that the site is not attractive to a national grocery retailer and based on the evidence before me, I have no reason to disagree. In respect of regional grocery retailers, from the outcome of the various enquiries that have been made, there is a general theme of opinion that there are “not enough chimney pots”, or insufficient dwellings present, within the area to justify the proposal.
10. It is noted that the site has been marketed as an empty development site, without a built-out retail unit present. While I am conscious of the Council’s views that independent retailers like to see a built shop prior to taking a unit on, that if the unit were built out it may be more attractive to a potential occupier and an occupier may seek a franchise following securing the unit, I am also conscious of the risk to the appellant of developing a retail unit at the site without a realistic prospect of it being occupied by a retail user. This risk is

clearly in the mind of the appellant, who stated that on the basis of the marketing that has already been undertaken, the store will not be built out.

11. It is also of note that the Council accepted at the hearing that the large size of the retail unit, at approximately 420m², may limit the attractiveness of the unit, such that it would not be attractive to all independent operators. The attractiveness to an operator of taking on the retail unit would also likely be tempered by the presence of 10 identified convenience shops within 1.6km of the appeal site¹. It is also accepted by the Council that there are existing accessible convenience facilities in the area that are able to support the day-to-day convenience shopping needs for the population in the area.
12. Notwithstanding the proximity of a school and approved sports pitches to the east of the site, there would be a limited amount of passing trade, given the location of the site within the allocation, off the main road to the north. This would further limit the desirability of the retail unit to potential operators.
13. I am mindful of the benefits of the proposed location of the retail unit, particularly in light of the Council having declared a Climate Crisis, in that there would be the potential to reduce the number of vehicular trips in the area. However, given the matters that I have outlined above, allowing a care home at this location would be no more injurious in this respect than the retail unit not coming forward due to lack of demand.
14. Therefore, while acknowledging the conflict with policy above, I find that sufficient marketing has been undertaken to satisfactorily demonstrate that there is insufficient demand for the approved retail unit and that it is unlikely to come forward. This is a material consideration of sufficient weight to outweigh the conflict with policy WMC8 of the Core Strategy.

Character and appearance

15. The proposed care home building would have three-storeys of accommodation above ground level, with a basement provided below. It would have a largely rectangular form, albeit with a wing attached to and protruding from the rear elevation. The longest elevation would address the existing road that adjoins the south of the appeal site, while the main entrance to the building would face eastwards and be visible when entering the wider development site.
16. The largest elevation to the road would be approximately 58 metres in length and be three storeys in height for this full length. However, this elevation is broken down visually into different elements which provide articulation, rather than appearing as a single, flat elevation. The articulation of the elevation would reflect the scale of the residential development nearby. In addition to this, the third storey of accommodation would be provided within a mansard roof, which is set back and slopes away from the main elevation, thereby further reducing the bulk of the building. The elevations in my view result in a coherent and understandable design, that would not be contrived.
17. I accept that the building would be substantial in its extent and larger than the approved retail unit. However, given the location of the development at the entrance to the residential development site, opposite an area of public open space, occupying a gateway location, it would also act as a focal building. It would not be located so close to the footway alongside the road so as to be

¹ Paragraph 2.34, page 6, Lambert Smith Hampton letter dated 30 July 2020

overbearing or oppressive. Indeed, there is sufficient separation between the building and the footway to allow for the inclusion of a substantial amount of landscaping, which would further re-enforce the integration of the proposal with the nearby open space.

18. The location of the building would be somewhat separate from the dwellings nearby, to the extent that a building of a different scale to them would be an appropriate design response. Moreover, while the building occupies a significant portion of the site, the inclusion of landscaping, together with the setbacks from the site's boundaries would ensure that it would not look cramped within its setting.
19. To the basement of the building are a number of functional spaces, including a staff room. The Council raise concern in respect of the amenity value of this space, given that there are no windows serving it. However, I note that this is intended as an area of respite for members of staff during their work shift, when on breaks. It is proposed as a functional area which would not be used for long periods. Furthermore, staff would be able to access the outdoor spaces around the building. The appellant highlights that there is no national or industry standard for such areas. I thus consider this to be a matter for the appellant and do not find that the staff room provision is indicative of any substandard design or overdevelopment of the site.
20. In terms of parking provision, the submitted site layout plan shows the provision of 23 parking spaces within the site. The Council highlight that this is an under provision, when considered against the Council's parking standards which require 29.5 spaces. The appellant sets out that the parking standards provide guidance and a starting point, rather than an absolute requirement.
21. The submitted Highway Statement of Case outlines that following a review of comparable developments, the proposed parking provision would be appropriate for the proposal. There is no substantive evidence provided to counter this and I note that the Council has not objected to the scheme on the basis of any concern over highway safety due to the lack of parking. Therefore, I find that the parking provision proposed would be acceptable given the characteristics of the site and any shortfall against the advised standard is not suggestive of an overdevelopment of the site.
22. Accordingly, I find the proposal would have an acceptable effect on the character and appearance of the area. Thus, the proposal complies with policies HE2 and KS12 of the Core Strategy, insofar as they seek to ensure that development is of a high-quality and that adequate vehicular parking is provided.

Dorset Heathland Site of Special Scientific Interest

23. The project site lies within 5km of the Dorset Heathland, a designated Site of Special Scientific Interest. The Council's Decision Report on the planning application identifies that the proposal, for a 64-bed care home, in-combination with other plans and projects and in the absence of avoidance and mitigation measures, is likely to have a significant effect on the Dorset Heathland. However, the report does not identify in what way such an effect is likely to occur.

24. The Dorset Heathlands are an extensive network of lowland heath within southeast Dorset that are recognised for their national and international importance for nature conservation. Evidence shows that the Dorset Heathlands are under significant pressure from an increasing number of people living nearby. As population grows, urbanising impacts from human pressures and damage caused by domestic pets have the potential to cause ongoing adverse effects on the protected habitats and species.
25. The Council has adopted The Dorset Heathlands Planning Framework 2020-2025 – Supplementary Planning Document (the SPD) which seeks to set out a strategy for the avoidance and mitigation of impacts arising from new residential development on the Dorset Heathlands. Appendix B sets out advice for different land uses and whether they are likely to cause a significant effect, alone or in-combination.
26. Development falling within Use Class C2 – Specialist housing i.e., sheltered housing/nursing home, is included within Appendix B, which identifies that this use is not likely to have a significant effect, that there should be no publicly available parking capacity and that no financial contribution is required. Further guidance is provided stating that certain types of specialist purpose-built nursing homes where residents are no longer active will not have a significant effect and do not need to provide mitigation, e.g., where nursing care is necessary, such as for advanced dementia or physical nursing needs. This includes purpose-built schemes for the frail elderly, where there is an element of close care provided on site 24 hours a day. The level of care would be above that of provision of an on-site wardening service provided for sheltered accommodation
27. On each floor of the proposed building the facilities would include large disabled-access assisted bathroom, disabled access assisted WC, 2 no. day-space lounge/dining areas, a clinical room and nurse station. Each floor will be accessible via staircase (two provided) and elevator (two provided). In addition to the above the following facilities will also be provided throughout the building:
- Ground floor: Reception area with offices, meeting room and waiting area; café/bistro; private dining area; hair and nail salon; laundry rooms (staff area); visitor's WC.
 - First floor: cinema; therapy room; an additional day-space lounge/dining area; 2 no. balconies; kitchen (staff area).
 - Second floor: day-space orangery; day-space quiet lounge; shop; sweet shop; 3 no. open roof terraces; 1 no. covered roof terrace; and a staff area with associated male and female changing rooms.
28. There are sixty-four spacious private residents' bedrooms within the proposed care home with 21 ground floor bedrooms, 25 first floor bedrooms and 18 second floor bedrooms. The submitted information also indicates that of the 64 bed spaces provided, 25 will be dementia care beds. Each bedroom will contain an en suite fitted with toilet, sink and shower cubicle. The rooms vary in size from 17m² to 20.8m², with the majority achieving 17.8m². Two communal garden areas will be provided within the site in addition to border and boundary planting to soften the appearance of the building within the locality. One of the garden areas will contain a summer house, green house and 6 no. raised allotment beds for use by residents. Parking for visitors and staff will be sited to the immediate east of the building. A total of 23 parking bays will be

provided, including 1 no. disabled parking space and 1 no. emergency service vehicle bay.

29. The level of care that would be provided within the proposed facility would, in my view, indicate that the nursing home will not be accommodating persons who would remain active. There would be no likely urbanising impacts from human pressures or damage caused by domestic pets that would have the potential to cause ongoing adverse effects on the protected habitats and species. As such, there would be no likely significant effect on the integrity of the Dorset Heathlands, and no mitigation is necessary, as advised in the SPD. Natural England have confirmed that the details of the scheme, as I have outlined above, are sufficient to ensure that any adverse effects on the protected site and its features would be avoided.
30. Accordingly, the scheme would not have a harmful effect on the Dorset Heathland Site of Special Scientific Interest and there would be no conflict with Policy ME2 of the Core Strategy, which seeks to protect the Dorset Heathlands.

Other Matters

31. The Council refers within the Delegated Report to a request for a financial contribution towards health care from the local NHS Trust, to be secured by a Section 106 legal agreement. The Council concludes that the need for the contributions has not been clearly justified, or evidenced as being directly related to the development, or fairly and reasonably related in scale and kind to the development proposed. Thus, the requested contribution would fail to accord with the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). I have no substantive evidence before me that would lead me to a different conclusion.
32. At the time of the determination of the planning application by the Council, the site lay in Flood Zone 1, as defined by the Environment Agency's flooding maps. Subsequent to the publishing of revised information by the Environment Agency, the site now lies within Flood Zone 2. The Framework, at paragraph 159, sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from the areas at highest risk. The Planning Practice Guidance sets out that the aim of the ST is to steer new development to Flood Zone 1. Where there are no reasonably available sites in Flood Zone 1, decision makers should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2, applying the ET if required.
33. Prior to the hearing I invited the parties to provide additional information addressing the change in the flood zone status of the appeal site. The appellant undertook a Sequential Test (ST) reviewing site allocations in the development plan as well as looking for sites from a variety of property sources. The ST demonstrated that there were no reasonably available sites in areas with a lower probability of flooding, that would be appropriate for the type of development proposed. The Council confirmed at the hearing that it considered the ST to be passed and that the matter could be satisfactorily addressed by a planning condition in respect of finished floor levels, should planning permission be forthcoming. I have no compelling reason to find otherwise.

Conditions

34. In the interests of certainty, I have imposed a condition specifying the approved plans to which the planning permission relates. I have imposed conditions in respect of the construction of the vehicular access, parking/turning areas and visibility splays in the interests of highway safety. A condition in respect of cycle parking facilities is included in the interests of promoting sustainable travel.
35. To ensure that the development does not have an adverse effect on matters of ecological value, a condition in respect of protected species mitigation is included. A materials condition and a condition in respect of landscaping are included in the interests of protecting the character and appearance of the area. In the interests of protecting the living conditions of neighbouring occupiers, I have also imposed a condition in respect of construction working hours. So as to ensure that there is not detriment to the environment, a condition requiring the implementation of drainage works, as well as a conditions in respect of energy and water efficiency, are included. As mentioned above, in order to make sure that the development is safe from flooding, I have also included a condition in respect of finished floor levels. In order to protect neighbouring uses, I have also imposed a condition in respect of an obscure glazed screen to a first-floor balcony.

Conclusion

36. I acknowledge that the scheme would conflict with the requirements of Policy WMC8 of the Local Plan, in that it would replace the retail unit/local centre that was aspired to within the allocation of the new neighbourhood. However, I find that given the extent of the marketing that has been undertaken to date, there is little or no realistic prospect of the retail unit being delivered on this site. I consider that this is a material consideration sufficient to outweigh the conflict with this policy. Additionally, I find that the design of the appeal scheme would be acceptable at this location and that there would be no harmful effect on the Dorset Heathland Site of Special Scientific Interest.
37. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Instructed by

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Ellie Lee

Dorset Council

Dorset Council

Lambert Smith Hampton

Dorset Council

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SCHEDULE OF CONDITIONS

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - H.19.17 (00) 2 M Proposed Ground Floor Plan
 - H.19.17 (00) 3 N Proposed First Floor Plan
 - H.19.17 (00) 4 L Proposed Second Floor Plan
 - H.19.17 (00) 6 Proposed Basement Floor Plan
 - H.19.17 (27) 1 A Proposed Roof Plan
 - H.19.17 (9) 3 G Proposed Site Plan
 - H.19.17 (9) 4 A Proposed Waste Strategy
 - H.19.17 (9) 5 Proposed Boundary Plan
 - H.19.17 (20) 1 B Existing and Proposed Cross Sections
 - H.19.17 (21) 1 F Proposed Elevations 1
 - H.19.17 (21) 2 D Proposed Elevations 2
 - 17-184/010 B Proposed Drainage
 - 17-184/012 A Proposed Tracking
 - BDWS21671-03 E Tree Protection
 - BDWS22585 11 E Landscape Proposals
- 3) Before the development is occupied or utilised the first 5.00 metres of each vehicular access, measured from the rear edge of the highway (excluding the vehicle crossing) must be laid out and constructed to a specification that has been submitted to and approved in writing by the Planning Authority.
- 4) Before the development is occupied or utilised the access, geometric highway layout, turning and parking areas shown on approved plans must be constructed. Thereafter, these must be retained, kept free from obstruction and available for the purposes specified.
- 5) Before the development hereby approved is occupied or utilised the visibility splay areas as shown approved plans must be cleared/excavated to a level not exceeding 0.60 metres above the relative level of the adjacent carriageway. The splay areas must thereafter be retained and kept free from all obstructions.
- 6) Before the development is occupied or utilised the cycle parking facilities shown on approved plans must have been constructed. Thereafter, these must be retained, kept free from obstruction and available for the purposes specified.

- 7) The development hereby approved shall not be occupied unless and until the protected species mitigation measures as detailed in the mitigation plan dated September 2020 have been completed in full unless any modifications to the agreed mitigation plan as a result of the requirements of a European Protected Species Licence or the results of subsequent bat surveys have first been submitted to and agreed in writing by the Local Planning Authority. Thereafter approved mitigation measures shall be permanently maintained and retained in accordance with the approved details.
- 8) No development above damp-proof course (DPC) shall take place until details and samples of all external facing and roofing materials have been provided on site and approved in writing by the Local Planning Authority (LPA). All works shall be undertaken strictly in accordance with the details as approved.
- 9) All hard and soft landscape shall be carried out in accordance with approved plan 'BDWS22585 11 E Landscape Proposals' prior to the occupation of any part of the development and the planting carried out in the first planting season following completion of the development. Any planting found damaged, dead or dying in the first five years following their planting are to be replaced with plants of the same size and species.
- 10) No construction work in relation to the development, including preparation prior to operations, shall take place other than between the hours of 08.00 hours to 18.00 hours Monday to Friday and 09.00 hours to 13.00 hours on Saturdays and at no time on Sundays, or Public or Bank Holidays.
- 11) Proposed drainage details shall be carried out in accordance with the following drainage information:
 - 17-184/010 B Care Home Preliminary Drainage Strategy,
 - 17-184-09A Care Home Drainage Technical Note Combined, and
 - 17-184 Leigh Road_SW Dummy Model for Retail Unit.The surface water scheme shall be fully implemented in accordance with the submitted details before the development is completed and maintained as such for the lifetime of the development.
- 12) No development shall take place until details of finished floor levels have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.
- 13) No development above damp-proof course (DPC) shall take place until details have been submitted to and approved in writing by the Local Planning Authority that cover the following matters:
 - how the development shall achieve at least 10% of the total regulated energy (used for space heating, hot water provision, fixed lighting and ventilation) used in the dwellings in each phase from renewable sources, unless otherwise agreed in writing with the local planning authority,

- that options for district heating, and/or power facilities to serve the development have been investigated,
- where it is possible to do so the development should be connected to a district heating and/or power facility in accordance with a scheme to be submitted to and agreed in writing by the Local Planning Authority.

The scheme shall be implemented in accordance with the agreed details.

- 14) No development above damp-proof course (DPC) shall take place until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme should demonstrate a standard of a maximum of 110 litres per person per day is applied for all residential development. The scheme shall be implemented in accordance with the agreed details.
- 15) Before the development is brought into use, the first-floor balcony in the northern wing must be glazed with a 1.8m high obscure glass screen to its northern elevation to a minimum Pilkington privacy level 3 or equivalent. Thereafter the obscure glazing shall be retained for the lifetime of the development.