
Appeal Decision

Site visit made on 28 February 2022

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Appeal Ref: APP/V1260/21/3280096

**84 Glenville Road and land to the rear of 80 and 82 Glenville Road,
Christchurch BH23 5PY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Bates and Mr Ayres against the decision of BCP Council.
 - The application Ref 8/20/1109/OUT, dated 26 November 2020, was refused by notice dated 8 June 2021.
 - The development proposed is described as sever the land to the rear of Nos. 80 and 82. Demolition of existing property No. 84 and construction of 5 x 3 bed dwellings and 1 x 4 bed dwelling with associated access and parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with landscaping reserved for future determination. I have therefore treated the minimal landscaping details shown on the plans as indicative.

Main Issues

3. The main issues are:
 - the effect of the development on the integrity of habitats sites; and
 - whether the development would provide acceptable living conditions for future occupants in relation to noise and outlook.

Reasons

Habitats sites

4. The site lies within 5km of the Dorset Heathlands Special Protection Area, and the Dorset Heaths Special Area of Conservation and Ramsar sites (the habitats sites). These designations overlap that of a Site of Special Scientific Interest also designated in relation to heathland.
5. Considered alone and in combination with other plans or projects the development would have a likely significant effect on the integrity of the habitats sites. This would be due to the increased population that the 5 additional dwellings would support, and the associated generation of

recreational activity, some of which might reasonably occur within the designated boundaries of the habitats sites. An Appropriate Assessment is therefore required.

6. The designation of the habitats sites relates to the range of protected priority habitats and species that they support. Where available, their conservation objectives seek to maintain or restore integrity, including that of qualifying features. Increased recreational use would be at odds with these objectives.
7. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (the DHPF) sets out the Council's mitigation strategy. This consists of infrastructure projects funded through the Community Infrastructure Levy, and strategic access management and monitoring measures (SAMM) funded by financial contributions. Natural England (NE) has indicated that it raises no objection to the development subject to mitigation being secured in line with the DHPF.
8. Failure to provide mitigation was a reason for refusal of planning permission. Direct payment of the required SAMM contribution was however subsequently made. The appellants sought to secure this with a Unilateral Undertaking (the UU), which the Council refused to accept given the identification of flaws. An amended version of the UU (the amended UU) has since been provided. Though it appears to be freshly signed it both carries the original date and appears to be intended as a direct substitute. However, this is not a legitimate means by which an executed planning obligation can be varied, or clearly legitimate in itself. The amended UU therefore carries no weight.
9. In the first instance the obligations within a UU cannot bind those who are not a party to it. Though the UU sets out the purpose of the contribution, the Council would not be obliged to spend it in any particular way. The Council's refusal to accept the UU underlines this point. The drafting of the UU is otherwise flawed, given that it states that it will have no further effect, and the contribution will be returned upon request, if planning permission is refused, which has already occurred. Here a separate clause relates to dismissal of an appeal. The UU therefore fails to secure the contribution, and thus it attracts no weight. Given the lack of sound or sufficient legal guarantee that the contribution would be used for its intended purpose, it too attracts no weight.
10. Alternative solutions which would have lesser effect exist, insofar as provision of appropriately secured mitigation would address the likely significant effects outlined above. As such, allowing the appeal would be contrary to the Conservation of Habitats and Species Regulations 2017 (as amended).
11. For the reasons outlined above, I conclude that in the absence of properly secured mitigation the development would have a likely adverse effect on the integrity of the habitats sites. The development would therefore conflict with Policy ME2 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy 2014 (the CS) which seeks to both safeguard the Dorset heathlands, and to secure mitigation in line with the DHPF.

Living conditions

12. Five of the proposed dwellings would back onto a 2-track main railway line which is set within a cutting. Here the Council's concerns relate solely to the exposure of the proposed outdoor amenity spaces of these 5 dwellings to noise.

13. Noise from passing trains is typically of limited duration and is normally characterised by a regularity which reflects the timetabling of services. Whilst I have been provided with no details of the latter, I heard only 2 trains pass during my morning weekday visit. This is presumably usual for that time of day. Given that noise caused by passing trains is brief, infrequent and predictable, it is far more tolerable than if it was constant.
14. Insofar as the development would take place on land which itself currently forms back garden space, the proposed outdoor amenity space already serves this function. In this regard its level of exposure to noise from passing trains would not be any different to its current level of exposure.
15. The existing gardens are longer, and the level of exposure to noise falls slightly with distance. In this regard the proposed outdoor amenity spaces would fall within the most exposed parts of the existing gardens. Future occupants of the development would thus be relatively more exposed to noise than current occupants of 80 – 84 Glenville Road.
16. The level of exposure would nonetheless be similar to that of dwellings towards the east and west of the site, where housing has previously been constructed between dwellings fronting Glenville Road and the railway. Some such developments are recent, amongst which that immediately to the east of the site appears to feature no more than a standard 6' fence between it and the cutting. The exposure of the proposed amenity spaces to noise would not therefore be unusual within the local context.
17. The Planning Practice Guidance (PPG) states that external amenity spaces are an intrinsic part of the overall design, the acoustic environment of those spaces should be considered so that they can be enjoyed as intended. In view of my findings above, noise would not cause the proposed outdoor amenity spaces to be unsuitable or unacceptable.
18. Insofar as the PPG otherwise states that noise can be partially offset by a relatively quiet facade containing windows to habitable rooms, the parties agree that noise levels within the dwellings would be acceptable. Occupants would therefore have access to such a facade. There is no specific requirement for such windows to also face onto private space.
19. Insofar as the Council's concerns include outlook, these relate the installation of acoustic fencing. Screening by fences falls within the scope of the reserved matter of landscaping, and thus the height and specification of boundary fencing remains to be determined. In this regard the submitted Noise Impact Assessment models 3 different fence heights. This shows that fencing of 4 metres height would be little more effective in reducing exposure to noise than fencing of 3 metres height. Indeed, the majority of the outdoor amenity space would remain exposed to the same level of noise regardless. It appears that this would be similarly true were fencing of a lower height installed instead, such as is seen adjacent to the site. Thus, whilst a fence of 3 or 4 metres height could potentially have an overbearing effect on adjacent space, given my findings above, such a fence would serve little useful purpose. Fencing of lesser height which would not be overbearing could therefore be acceptable. It is also of relevance that the boundary, as too any fence along it, could be further screened and softened by planting.

20. For the reasons outlined above I conclude that the development would provide acceptable living conditions for future occupants in relation to noise and outlook. It would therefore comply with saved Policy H12 of the Christchurch Local Plan 2001 which states that residential development will be permitted where the amenities of future occupiers are not adversely affected by noise. Insofar as the Council also cited Policy HE2 of the CS, this is not directly applicable, as provisions concerning amenity relate to nearby properties rather than to future occupants.

Other Matters

21. The site hosts a good population of slow worms, which are a protected species. The development would have an adverse effect on the population, and a mitigation strategy has been prepared accordingly. NE has indicated that this is satisfactory. Had the scheme been otherwise acceptable, both this and future management could be secured by condition.
22. Interested parties have raised a broad range of additional concerns which are not shared by the Council. These include adverse impacts on neighbouring properties and others within the street due to overlooking, loss of sunlight, parking pressure, increased traffic, noise, and loss of property value. Insofar as there would be reasonably long separation distances between existing dwellings and the 5 proposed to the rear of the site; none of the proposed dwellings are located south of an existing dwelling; the development would provide on-site parking; would not give rise to a significant number of additional vehicle movements; is not of a scale or type that can be expected to give rise to undue levels of noise; and property values are a private matter, I see no reason to reach a different view.
23. At the time the application was determined the Council's Housing Delivery Test (HDT) result fell below the 75% threshold which triggers the 'tilted balance' set out within paragraph 11 of the Framework. The Council also acknowledged a modest shortfall in its demonstrable 5-year supply of deliverable housing sites (5YHLS). Whilst the most recent HDT results are higher, the Council has since confirmed a sizeable fall in its 5YHLS. Even so, my findings in relation to habitats sites, and the application of paragraph 182 and Footnote 7 of the Framework, mean that the tilted balance is not applicable.
24. The development would otherwise provide 5 additional units in an accessible location, helping to make better use of the site. However, notwithstanding the social and economic benefits this would deliver, including in relation to the Council's shortfall, they would be clearly outweighed by the adverse environmental effects of the scheme.

Conclusion

25. For the reasons set out above the scheme would have an unacceptable effect on the integrity of the habitats sites. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR