
Appeal Decision

Site visit made on 5 April 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2022

Appeal Ref: APP/D1265/W/21/3283260

The Sandford, Sandford Road, Sandford BH20 7AE

- 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 J Perry (The Sandford Public House) against the decision of Dorset Council.
 - The application Ref 6/2021/0027, dated 18 January 2021, was refused by notice dated 7 June 2021.
 - The development proposed is described on the application form as, "Positioning of 4 eco pods as tourism accommodation (no cooking facilities to be installed)".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Notwithstanding the description of development set out in the banner heading above, which is taken from the application form, it is clear from the plans and documentation submitted with the appeal that the proposal is for 5 eco pods. The Council dealt with the application on that basis and so shall I.
3. At the site visit I observed the 5 eco pods related to this appeal. Nevertheless, I cannot be certain that the development that has been carried out is exactly the same in its entirety as that which has been applied for. Thus, for the avoidance of doubt, this appeal decision only relates to the proposed development as shown on the submitted appeal plans.

Main Issue

4. The main issue is the effect of the proposal on biodiversity.

Reasons

5. The appeal site is situated to the rear of the Sandford Public House (pub). At the time of my site visit it contained 5 eco pods positioned in front of a fence. The appellant has confirmed that each proposed eco pod would contain a bedroom, a shower room, and a lounge area with a small external deck to the front. The site is located adjacent to a large field.
6. It is common ground between the main parties that the site falls within the 400 metres buffer from the Morden Bog and Hyde Heath Sites of Special Scientific Interest (SSSI), which is a nationally designated site of importance for biodiversity. It is also common ground that much of the SSSI area is part of internationally designated sites of importance for biodiversity. These are the Dorset Heathlands Special Protection Area (SPA), a Ramsar site (wetlands of

international importance listed under the Ramsar Convention), and also the Dorset Heath Special Area of Conservation (SAC).

7. Policy DH of the Purbeck Local Plan Part 1 (adopted 2012) (Local Plan) provides that, amongst other things, tourist accommodation including hotels, guest houses, boarding houses, bed and breakfast accommodation, tented camping and caravans which require planning permission (C1 uses) and self-catering tourist accommodation will not be permitted within a 400 metres buffer around protected heathland. For the avoidance of doubt, Policy DH does not state that the specified development will not 'normally' be permitted, but rather that it will not be permitted.
8. Similarly, The Dorset Heathlands Planning Framework 2020-2025 (Supplementary Planning Document) (adopted 2020) (SPD) provides that, amongst other things, any net increase in touring proposals will not be allowed within 400 metre heathland area.
9. Whilst eco pods are not specifically mentioned within the text of Policy DH or the SPD, the use of the word 'including' in Policy DH indicates that the examples of tourist accommodation provided within Policy DH are not exhaustive. Moreover, considering the small size of the proposed eco pods, their lack of cooking facilities, that a bedroom and a shower room would be provided in each eco pod, and their proposed location to the rear of the pub, in my view they would fall within the definition of tourist accommodation given in Policy DH.
10. Reference has been made to Policies E7 and E8 of the emerging Purbeck Local Plan 2018 – 2034 (emerging Local Plan) which relate to the conservation of protected sites, including the Dorset heathlands. From the information before me, it appears that the emerging Local Plan is subject to further modification. On this basis, I have given Policies E7 and E8 of the emerging Purbeck Local Plan limited weight.
11. The proposed eco pods would be likely to be used as overnight holiday accommodation and consequently would have a similar impact upon the designated sites as that which would arise from touring holiday accommodation. In relation to this, Natural England have highlighted that, in their opinion, taking into account the cumulative impacts of other development with like effects, the proposal is more likely than not to add to residential development effects on the special features of the SSSI.
12. Furthermore, Natural England consider that it is likely to be exceptional where circumstances exist to be convinced that, in combination with other plans and projects, overnight accommodation close to the European sites would not add to adverse pressures on the integrity of these sites. Natural England suggest that exceptional circumstances do not exist in this case.
13. I note that hotels and guest houses are referred to in Appendix B of the SPD. The proposal would only involve 5 bed spaces, and potentially the eco pods would not be occupied throughout the year. Nevertheless, the SPD states that the nature of hotel users is highly variable and within the 400 metre area cases will be treated on a case-by-case basis with advice from Natural England. Considering the variable nature of hotel users, and the submitted objection from Natural England with respect to the appeal proposal, it does not follow that the proposed eco pods would necessarily have a lesser impact in terms of

recreational pressures on the designated sites to that which would occur with the development of a hotel or guest house.

14. Whilst it may be the case that the proposal would encourage visitors to stay in more modest and low-key facilities than any temporary 'pop-up' 28-day permitted development rule campsites, which potentially could have unrestricted numbers of visitors, this consideration does not eliminate the likely negative effects that would arise via the proposal on the designated sites.
15. In this context, it has been suggested by the appellant that any likely significant effects of the proposed development upon the heathlands could be avoided or mitigated via financial contributions made under the Community Infrastructure Levy (CIL). In this regard, Policy DEV of the Local Plan provides that, amongst other things, further detail on contributions and projects is set out in the SPD. The SPD makes clear that mitigation is associated with some types of development within the 400 metres to 5km heathland area. However, the SPD also sets out that development within the 400 metres heathland area, which includes the appeal site, will be restricted.
16. Therefore, having regard to paragraph 8.8.6.3 of the Local Plan, which also references the SPD, and the requirements of Policy DH of the Local Plan which refers to contribution towards mitigation measures in relation to development between 400 metres and 5km of a heathland only, and considering that the site falls within the 400 metres buffer from the heathland, in policy terms the proposed development would not be eligible for heathland mitigation via financial contributions made under CIL.
17. Consequently, in relation to the appeal proposal, CIL could not be used for the purposes specified by the appellant. These purposes include wardening, raising awareness to encourage visitors to behave in ways less harmful to the heathlands, and educating visitors about the presence and vulnerability of breeding birds, their feeding requirements, and their habitats.
18. Moreover, Policy BIO of the Local Plan makes clear that the avoidance, mitigation and compensation provisions in Policy BIO do not apply to SSSIs, SPAs, Ramsar sites, nor SACs. Hence, Policy BIO does not provide support for the proposal.
19. Even if a condition restricting pets staying in the proposed eco pods were enforceable, it would not overcome the harm arising through the recreational pressures on the designated sites that would arise from the use of the eco pods, including from visitors exploring the local area, which includes the designated sites. This would also be the case for the installation of bird and bat boxes and feeders and other biodiversity enhancement measures.
20. Conditions have also been suggested requiring that educational leaflets are included in each proposed eco pod, to promote the need to protect the designated sites and species and how this could be achieved, as well as details of guided walks and themed events. Similarly, conditions have been suggested which would require leaflets and information to be made available, which would promote alternative areas or attractions for visitor recreation. However, whilst I recognise that the surrounding area is well-served with visitor attractions, such conditions would not prevent the visitors to the proposed eco pods travelling to the nearby designated sites.

21. Therefore, all the proposed conditions would not adequately mitigate the potential harm to the designated sites arising via the proposal. Accordingly, the proposed conditions would not make the development acceptable in planning terms.
22. The appellant has mentioned the potential use of a planning obligation, in relation to avoidance and mitigation measures. However, no planning obligation has been provided. Furthermore, a condition requiring the submission of a planning obligation would be a negatively-worded condition, and the Planning Practice Guidance advises that such conditions should only be used in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk¹, which has not been demonstrated in this case. Consequently, it would not be reasonable to impose a condition relating to this matter.
23. I have considered the examples of planning permissions referred to, granted by the New Forest National Park Authority. With respect to the planning permission at land at Burley Manor Hotel², Natural England had no objection subject to mitigation, in contrast to the appeal proposal where Natural England have issued an objection. In relation to the planning permission at Hotel Terravina³ no evidence has been provided which shows that Natural England objected to that proposal. As such, neither of these examples are sufficiently comparable with the appeal proposal so as to change my findings.
24. I therefore find that the proposal would have an unacceptable and significantly harmful effect on biodiversity. It would conflict with Policies BIO and DH of the Local Plan, which collectively aim to, amongst other things, protect, manage and enhance Purbeck's biodiversity. It would also conflict with Policies E7 and E8 of the emerging Local Plan, which collectively seek to, amongst other things, conserve protected sites, including the Dorset heathlands.
25. The proposal would conflict with the overall objective of the SPD, to avoid any adverse effects on the integrity of the Dorset Heathlands. The proposal would also conflict with chapter 15 of the National Planning Policy Framework (the Framework) and The Conservation of Habitats and Species Regulations 2017 (as amended) which, amongst other things, collectively seek to conserve and enhance the natural environment.

Other Matters

26. I have found above that the proposal would conflict with an up-to-date development plan. In this respect I am mindful of the Framework's requirement that the planning system should be genuinely plan-led. In such situations, the Framework advises that planning permission should not usually be granted. However, it is necessary to consider whether other material considerations indicate that the plan should not be followed.
27. Similarly, Policy BIO of the Local Plan provides that, amongst other things, in considering the acceptability of proposals, the Council will assess their direct, indirect and cumulative impacts relative to the significance of the nature conservation value, and balance them against other sustainable development objectives.

¹ Paragraph 21a-010-20190723

² Ref 19/00701

³ Ref 20/00047

28. Paragraph 180 b) of the Framework also provides that development on land within or outside a SSSI, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted, with the only exception being where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs.
29. Considering that 5 eco pods are proposed adjacent to an existing pub, the proposal would not be likely to cause negative effects in relation to traffic movements, highway safety, parking, flood risk, nor in relation to the living conditions of neighbouring occupiers. However, these are neutral matters, which do not weigh in favour of the proposal, as is the fact that Policy CO of the Local Plan applies to development outside of a settlement boundary and so is not directly relevant to the proposal.
30. The proposed eco pods would be situated in an accessible location, in an area where new development should be concentrated, according to Policy LD of the Local Plan. The site is outside of any Areas of Outstanding Natural Beauty and the Green Belt, within an area that Policy TA of the Local Plan identifies as being suitable for tourist accommodation.
31. The proposed eco pods would occupy an underutilised area of land, thereby making a more efficient use of the site, although the evidence does not conclusively show that the proposal would make the best viable use of the land.
32. I recognise the significant struggles faced by business and community facilities caused by the ongoing coronavirus (COVID-19) pandemic. In relation to this, the proposed eco pods would diversify, complement, and enhance the quality and choice of tourist accommodation provision in the local area. This would be in accordance with paragraphs 8.19.1 and 8.19.2 of the Local Plan, which specifically refers to eco-friendly accommodation in the context of tourism being a key sector of the South West's region's economy.
33. The proposed eco pods would contribute to the financial viability of the pub, and thereby assist its continuing operation as a community facility and a generator of employment opportunities for local people. In this respect, the proposal would accord with the aim of safeguarding existing facilities and services given in Policy CF of the Local Plan, and would accord with paragraph 93 d) of the Framework which seeks to ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community. Nevertheless, minimal details have been provided to demonstrate the likely economic contribution that the proposed eco pods would make in these respects, which limits the weight that can be given to these factors.
34. The guests who would stay in the proposed eco pods would likely provide economic contributions to local facilities and services, and may contribute somewhat to the social life of the local area.
35. Taking all of the above into account, and considering that only 5 eco pods are proposed, based on the evidence before me it appears likely that the economic and social contributions of the proposal to both the pub and the local area would be fairly limited.

36. Hence, when taken together, all the other matters identified above can only be given moderate weight in favour of the proposal. Set against these benefits is the significant harm that the proposal would cause to biodiversity. Thus, I consider that the matters advanced in support of the proposal, do not, either individually or collectively, outweigh the harm identified, nor the conflict with the development plan that I have found.

Conclusion

37. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

Alexander O'Doherty

INSPECTOR