
Appeal Decision

Site visit made on 14 June 2022

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2022

Appeal Ref: APP/V1260/W/21/3279538

Steamer Point (former MCA Training Centre), Steamer Point, Christchurch BH23 4JQ

- 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 Pennyfarthing Homes Ltd against the decision of BCP Council.
 - The application Ref 8/19/1172/FUL, dated 9 August 2019, was refused by notice dated 22 March 2021.
 - The development proposed is the demolition of existing buildings and erection of 29 residential units comprising houses and apartments, associated car parking, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the description of development set out above, which is taken from the original application form, it is clear from the plans and accompanying details that the development comprises the demolition of the existing buildings and the erection of 26 residential units comprising houses and apartments, associated car parking, landscaping and associated works. The Council dealt with the proposal on this basis and so shall I.
3. During the appeal process the appellant submitted an amended scheme depicting a different layout for parking and garaging, and the retention of five trees. The appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is what was considered by the Council and interested persons. In this case the appellant has sought comments from the Council, local residents and some of the consultees to the original application. Having regard to this and the nature of the amendments, I have considered the proposed changes in my consideration of the appeal, and will henceforth refer to them as the revised scheme.
4. The Council refused the original application for five reasons. The fourth reason was concerned with the adverse effect of the proposal on the special features and integrity of the nationally and internationally important Dorset Heathlands Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Ramsar Site, and Dorset Heaths Special Area of Conservation (SAC). The fifth reason was that the application did not secure an acceptable affordable housing contribution. During the appeal, the appellant submitted a completed

Unilateral Undertaking (UU) securing, amongst other things, payment for mitigation measures to alleviate the harm to the nationally and internationally important sites, and for the provision of an off-site affordable housing contribution.

5. The Council have raised no objection to the principle of the UU, considering that if the required financial contribution for mitigation measures could be secured, the proposal would be acceptable in terms of its impact upon protected heathlands. A completed UU has been provided securing the amount required by the Council, thereby addressing the fourth reason for refusal.
6. In addition, the UU secures off-site affordable housing provision for flats and houses, and the Council consider the number and tenure split of these units to be acceptable, thereby addressing the fifth reason for refusal. Having regard to the provisions of the UU and the comments of the Council, the appeal turns on the remaining reasons for refusal.

Main Issues

7. The main issues in this case are:
 - the effect of the proposed development on the character and appearance of the area, including the impact upon protected trees; and
 - the effect of the proposed development on protected species.

Reasons

Character and Appearance

8. Positioned close to the coastal edge of Highcliffe Beach, the appeal site comprises a group of vacant buildings to either side of a spine road. The site is surrounded by security fencing, with a gated vehicular access from Penny Way. Along the southern boundary of the site is a coastal path that runs above the cliffs and beaches, providing access to the latter and to Steamer Point Local Nature Reserve (LNR). The LNR is an area of woodland and ponds, and the trees of the reserve are growing close to and over the eastern edge of the site. Along the northern boundary of the site there is a public car park and the houses and gardens of some of the properties in Freshwater Road. To the west are expansive areas of public open space, mostly laid to lawn with some isolated groups of trees.
9. The site was formerly used by the Maritime Coastguard Agency and there are a mix of single storey and two storey buildings set amongst trees and grassed areas. Apart from the curved roof two storey building, most of the other buildings have flat roofs and a plain, utilitarian appearance. To either side of the access road there are individual specimen trees, mostly Holm Oaks. In addition, there are other specimen trees within the site, and also a number of groups of trees, both along the northern boundary and to the northern side of the access road, as well as near to the site entrance.
10. A distinct feature of the area is the dominance of the beaches and their mostly tree covered cliffs. The gentle curve of the beaches along Christchurch Bay creates long, sweeping panoramas towards Hengistbury Head and Highcliffe, with the trees framing the beaches as a verdant linear edge. Even where development is close to the cliffs, such as at Avon Run Road, the presence of

mostly two storey buildings has a recessive appearance, thereby retaining the attractive dominance of the coastline.

11. The appeal scheme would incorporate a mix of detached and semi-detached two and three storey houses, as well as a four storey block of apartments, all of which would have a contemporary style with Art Deco references. Much of the nearby residential development comprises detached houses, with a variety of ages and styles apparent, including a few examples of plot redevelopment. Although in some areas there are dwellings close to the coastal edge, the presence of trees and the mostly two storey nature of the houses is such that the coastline is the dominant feature of the area.
12. Compared to the nearby residential areas, the size and heights of the houses and particularly that of the large, tall apartment building would appear discordantly prominent. Although the height of the houses would step up towards the apartments, the three storey nature of some of the houses and the large size, bulk and height of the apartment block, would make the appeal development intrusively imposing within the area. This intrusion would be conspicuously exaggerated given the proximity of the apartments to the cliffs, and also because within the surrounding area and for long distances along the coastline there are no other buildings that have such a size and consequential prominence. The context of the site is one where the beaches, cliffs and trees provide a strong identity to the area, with the adjoining and nearby residential development having a subservient, recessive relationship to the coastal landscape. Given the proximity of the site to the coastal edge, the apartments and tall houses would unacceptably erode the attractive, sweeping continuity of the tree-edged beaches that are such a feature of the area.
13. The flat roofs of some of the houses and the apartment building would reduce their bulk, as would the staggered height and layout of the apartments. Despite such measures, the apartment building would have a size and scale that would be radically different to any nearby buildings, and it would dominate the surrounding area. Whilst the intention is to create a landmark building, this does not ameliorate the significant visual disruption the building would have within an area defined by its landscape. The trees within the LNR and to the north of the site would provide a partial screening of the apartments, but even with this verdant setting, the building would be strikingly prominent, especially so when viewed from the west, both from the beach and from the land.
14. The northern-most part of the boundary of the site abuts some of the gardens of nearby dwellings. Apart from this, the site has a degree of separation from the surrounding residential development, with the trees near the site entrance and along the northern boundary enhancing the visual separation. Whilst the appellant is seeking to use this separation to create a sense of place, the loss of several trees near the entrance would substantially reduce the leafy enclosure of the appeal site, harmfully exaggerating the prominence of the buildings.
15. Furthermore, the provision of a gated residential estate would be strikingly different to the more traditional layout and styles of the adjoining and nearby residential areas. The development would have a deliberately segregated, exclusive appearance, with the high walls along the coastal path creating a solid and defensive relationship with the public realm. In some instances, as

referred to in the National Design Guide, it may be appropriate to create a new identity. In this case, not only would the development be at harmful odds with the nearby residential development, but given its proximity to the cliffs, it would also detract from the coastal landscape.

16. The National Planning Policy Framework (the Framework) gives weight to the value of using suitable brownfield land for homes, supporting development that makes an efficient use of land. The existing buildings have been vandalised, and the derelict nature of the site is apparent, particularly so to users of the coast path. Developing the site would accord with these objectives.
17. However, the Framework also requires that development is sympathetic to local character, including the built environment and the landscape setting. In view of my findings, the scheme would fail to accord with these objectives. For the reasons given, the nature of the scheme is such that the conditions suggested by the Council and appellant would not ameliorate this substantial harm. As such the proposal would fail to accord with Policy HE2 of the Christchurch and East Dorset Local Plan Core Strategy (2014) (CS), which seeks amongst other things, high quality development that reflects and enhances local distinctiveness, thereby reflecting objectives of the Framework.
18. The appellant has also drawn my attention to Policy ENV9 of the Borough of Christchurch Local Plan (2001), which requires amongst other things that development in coastal zones respects the scale and character of neighbouring buildings, protects existing skylines, and does not detract from the visual dominance of the cliffs. The previous appeal decision for outline permission (Appeal ref: APP/E1210/W/15/3002699) referred to this policy, considering that the principle of residential development on the site would not be at odds with it. However, the proposal before me is not just for the principle of the residential development of the site, but also the detail, and having regard to my findings the details of the scheme would fail to accord with the objectives of this policy.

Trees

19. Tall trees are a prominent feature of the area, providing a green skyline and setting to the cliffs and beaches at the same time as separating and screening nearby buildings from the coastal edge. This verdant appearance is a distinct element of the character and appearance of the area. The trees within the site and those within the LNR are part of the continuous verdant skyline that is visible from long distances away, including above the nearby residential areas. Consequently, the trees of the appeal site make a significant positive contribution to the character and appearance of the area, and one which is reflected by their protection with a Tree Preservation Order (TPO).
20. There are both individual specimens and groups of trees within the site, creating a woodland setting for the existing buildings. The presence of tall trees near to the site entrance and along most of the length of the northern boundary creates a woodland appearance that continues that of the LNR. When viewed from the surrounding area, including from the beaches, it is not just the trees close to the site boundary that are prominently visible. The tall height and large size of many of the trees within the site, including those near to the access road, also form part of the continuous leafy settings and skylines that are such a distinct feature in the area.

21. The group of trees to the northernmost end of the site would be retained, but apart from one tree near the site entrance and a few specimen trees to the western side of the apartments, most of the other trees would be removed. This would include the imposing avenue of Holm Oaks along the spine road and also the group that are to the north of the site entrance. The removal of so many trees, several of which are imposing specimens in their own right, would drastically change the character and appearance of the site and the contribution it makes to the area. The sylvan appearance of the site would only remain at the northern tip, with the remainder being dominated by buildings rather than trees.
22. Although the avenue trees are set back from the southern site boundary, they are large trees and are visible from the beaches and surrounding area. Their removal, along with the removal of most of the trees near the spine road and site entrance, would significantly reduce the linear green setting to the cliff top. Furthermore, these trees also contribute to the verdant skylines that are available from the surrounding areas, both from the beaches and from inland. A small cluster of tall trees near to the apartments and the group of trees to the northern tip of the site would remain, thereby partly retaining some of the leafy setting when viewed from inland. The latter are some distance from the cliff top. This separation and the presence of buildings in between them and the cliff top would create a conspicuous break in the verdant setting of the coastal edge.
23. The trees within the LNR would form a leafy backdrop to the site, as well as partially screening the apartments when viewed from the east. Nevertheless, the presence of the LNR trees would not compensate nor ameliorate the impact of the removal of so many other trees from the site. The felling of the trees and the prominence of the houses and apartments would combine to result in an unacceptably conspicuous intrusion of buildings close to the coastal edge.
24. The appellant has explained that the loss of trees is necessary to enable the efficient redevelopment of the site. The previous appeal decision for outline consent was for the erection of up to 26 houses, and this decision acknowledged that the presence of the protected trees would undoubtedly have some impact upon the total developable area. Having regard to the detailed plans before me, the proposal would necessitate the loss of about half the trees on the site, and of those left they would be concentrated into certain discrete areas. Whilst there is a balance to be struck between achieving the re-development of the site and the retention of the protected trees, in this instance it is the re-development that has taken precedence.
25. There has been little recent management of the trees, and many of those to be removed have been classed as low quality, including several that are growing in groups. Some are carrying deadwood, some have localised decay, and there are also a few dead specimens present. However, there are also 3 high quality and 21 moderate quality trees to be felled. Trees with imperfections such as deadwood, leaning stems, asymmetric crowns, and suppressed forms are not unusual, particularly when growing in groups, as this is part of a tree's self-optimisation within such a context. This would be especially so in this case due to the exposed coastal location. While some trees may lack individual merit, even those that are mature in age and of less than perfect form, contribute towards the essentially sylvan prominence of the site. The removal of so many

trees would unacceptably erode the verdant significance of the site within the area.

26. Furthermore, there are several young trees proposed for felling, thereby reducing the age range of species throughout the site. Although some replacement tree planting is proposed, there would be very few trees retained amongst the houses and near the apartments, and the new planting would take many years if ever, to make a similar contribution to the area as those trees to be felled.
27. BS5837 – Trees in Relation to Design, Demolition and Construction makes some allowance for disturbance to the roots and crowns of trees during construction works. The houses, apartments and associated parking and garaging would be very close to some of the retained trees. The development would not only necessitate works within the root protection areas but the crowns themselves would also have to be reduced. Having regard to the combination of these works, it cannot be assumed, nor has it been demonstrated with regard to those trees affected, that their long-term health and vitality would be ensured following the re-development of the site.
28. Several of the canopies of the trees that would remain would be very close to some of the houses, with others growing over the roofs of the garages. The rear gardens of some of the houses would be dominated by tall trees. There would be a need to continually maintain the trees to keep their crowns away from the buildings, particularly as some of the rooms available to future occupiers would experience little if any direct sunlight, and others would have outlooks dominated by trees. There would also be the inconvenience of leaf and seed litter for future residents. In addition, those trees to the west of the apartments are of such a size that they would impact on the sea views available, as well as casting shade. It does not follow, nor can it be guaranteed, that future occupiers of the homes would wish to be in such close proximity to tall trees and have the ongoing inconvenience and responsibility of living next to them and managing them.
29. The revised scheme submitted for the appeal shows an altered layout for the parking areas and buildings which would allow the retention of five additional trees. This would be a positive aspect, but their retention would only slightly extend the tree cover to the northern part of the site, and would do little to ameliorate the significant harm arising from the felling of so many of the trees elsewhere.
30. Other appeal decisions have been brought to my attention with regard to the proximity of homes to trees, but as these are for smaller developments the circumstances arising in these cases are so different as to not impact upon my decision with regard to this case. The appellant has drawn my attention to extensive works to remove Holm Oaks at Evening Hill, considering such trees to be inappropriate for clifftop locations. However, both within the appeal site and within the adjoining LNR there are a number of Holm Oaks, and there are also other examples of this species elsewhere along the coast. As these trees are evergreen, they contribute to the rich diversity of species present in the area. Moreover, these trees can tolerate poor soils and exposed locations, including coastal locations. In addition, it appears that there were habitat management reasons for felling these oaks. Such circumstances are very

different to the case before me, and it does not follow that the removal of these oaks forms a binding precedent for felling those in the appeal site.

31. The Framework recognises the importance of trees to the character and quality of an area, including retaining existing trees wherever possible. In this case the felling of so many trees would unacceptably harm the character and appearance of the area, and for the reasons given above the suggested conditions would not overcome this substantial harm. As such the proposal would be contrary to CS Policies HE2 and HE3, as these policies seek amongst other things, high quality development that reflects and enhances local distinctiveness, taking into account natural features.

Protected Species

32. The appeal site has been identified by the Council as being extensively used by a variety of bat species primarily for foraging and travel, and in recognition of this, the scheme includes proposals to minimise light pollution. In addition to the 10m buffer strips to be retained as a dark corridors, Smart Glass would be used in many of the windows facing these buffers, and parking, access roads, paths, and communal areas would include measures to minimise light spillage. These are positive aspects of the proposal.
33. The former use of the site would have generated light spill, and the adjoining residential properties would also have an impact upon bats. However, the buildings have been vacant for some years, and the nearby homes and the existing buildings are mostly surrounded by trees which would have some mitigating impact upon light spill. The proposed scheme would remove most of the trees and existing hedgerows within the southern dark corridor. In addition, the apartments and the southern-most row of houses would be immediately adjacent to the buffer strips, having large areas of glazing that would cast light spill directly into the dark corridor. Although the Council are satisfied that the proposed measures would minimise most of the impact of the homes upon the bats, the implementation and monitoring mechanisms to ensure that mitigation is ongoing along with responsibilities if there is non-compliance, have not yet been resolved.
34. Suggested conditions and requirements in the UU to seek mitigation and compliance include the provision and agreement of a Lighting Management Plan (LMP). The appellant has suggested future residents of the houses and apartments could have covenants imposed so as to maintain, repair and replace the Smart Glass, with additional controls regarding external lighting. In addition, the UU requires that the occupiers of the dwellings would have to comply with an approved LMP.
35. However, the design of the homes and the layout of the site is such that without mitigation, significant ecological disturbances to protected species would occur. The efficient and ongoing use of Smart Glass is essential in the interests of the protected species, and if these safeguards cannot be guaranteed, then significant harm would arise. Whilst I note the LMP is currently a draft, it nevertheless raises a number of concerns that are currently unresolved, including the ongoing control of the retention, maintenance, operation, and management of the Smart Glass within the apartments and the houses. Ongoing monitoring would be required for the lifetime of the buildings, and this in itself raises the issue of who and how such monitoring would be achieved, as well as who would be responsible for enforcing any breaches.

36. From the evidence before me the draft LMP provides neither precision nor certainty of how the protection for bats would occur, be controlled, monitored, and enforced for the lifetime of the buildings. Given the circumstances of this case, a conditional requirement to submit and subsequently agree an LMP provides no certainty that the bats would be protected for the lifetime of the buildings. In addition, the UU agreement relies on the approval and subsequent adherence to an agreed LMP, and again there is no certainty before me that such an agreement could be achieved nor that its requirements, whatever they would be, would be adhered to.
37. A financial contribution is proposed to be used for the future management of the adjacent LNR. Such a contribution could have wider ecological benefits, but it would not ameliorate the significant harm that could arise if the dark buffers failed to operate as intended. Having regard to the essential need for the protection measures and particularly for the buffers to remain as dark as possible, I am obliged to take a precautionary approach as I have little certainty that even with the installation of Smart Glass that measures could be found and maintained to ensure the protection of the protected species. Consequently, until this has been resolved, it cannot be assumed that the development could be undertaken so as to mitigate in perpetuity the harmful impact upon the protected species that use the site. As such the proposal would conflict with CS Policies HE2 and ME1, which require amongst other things, that development is compatible with its surroundings and would not result in adverse impacts to protected species, thereby reflecting objectives of the Framework.

Other Matters

38. The site is within 5 kilometres of the nationally and internationally protected Dorset Heathlands, whereby a net increase in the number of dwellings would be unacceptable without appropriate mitigation of the impact of future occupiers upon these important sites. The original application was refused because the likely significant effects arising from the development had not been mitigated, and the development would therefore result in an adverse effect upon their integrity. In the absence of such mitigation the development would fail to protect the Dorset Heathlands as required by CS Policy ME2 and the Dorset Heathlands Planning Framework Supplementary Planning Document (2016).
39. The Conservation of Habitats and Species Regulations (2017) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with other schemes. This responsibility falls to me in the context of this appeal with regard to the impact of a proposal on the Dorset Heathlands. During the appeal a completed UU was submitted in part to provide a financial contribution for mitigation measures. The Council have stated that the completion of the UU to secure a financial contribution to mitigate the impact of the proposal upon the Heathlands would be acceptable. I will return to this matter below.
40. Local residents have raised a number of matters, including the creation of a precedent if the appeal was allowed, the validity of the appeal, matters of site contamination, flooding impacts, the stability of the cliffs, increased traffic levels, parking, service provision, and the exploration of alternative uses for the site. The appeal was submitted within the six months window from the

date of the Council's decision and was duly made with that regard. Alternative uses for the site are not for me to address as I am obliged to consider the appeal rather than consider whether other uses would be appropriate. Of those concerns relevant to the planning considerations of the case, following my findings on the main issues, I have no need to consider them further.

41. Finally, the appellant and some local residents have raised concerns with regard to the Council's handling of the pre-application, application and appeal. Such concerns fall to be pursued by other means separate from the appeal process and are not for me to consider.

Planning Balance

42. The Council acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites. Consequently, Paragraph 11(d) of the Framework is engaged, whereby planning permission should be granted unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.
43. The re-development of a vandalised, brownfield site that has been identified as suitable for housing provision would contribute towards the supply of housing, and there would be the further benefit of providing affordable housing units. These social benefits carry weight. There would also be a small, time-limited economic benefit arising from the construction phase of building additional homes. In addition, the financial contribution towards ecological works on the adjoining LNR would be an environmental benefit of the scheme.
44. Weighing against these benefits would be the significant environmental harms arising from the development of the site. The proposal would deliver additional high-quality homes, but in doing so would cause significant harm to the distinct character and appearance of the area. This harm would be exaggerated by the substantial loss of many protected trees, the loss of which would unacceptably erode the attractive and unique nature of the coastal scenery. CS Policies HE2 and HE3 are consistent with the Framework, as the Framework also requires development to be sympathetic to local character, and recognises that trees make an important contribution to the character and quality of urban environments, requiring their retention where possible. Furthermore, the absence of conclusive and effective mechanisms to protect the protected species that use the site is another harm that weighs against the proposal.
45. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. The adverse environmental impacts in this case amount to cumulative environmental harm which carries substantial weight, and this thereby significantly and demonstrably outweighs the economic benefits and even the weight that derives from the social benefits, when assessed against the policies in the Framework as a whole. In addition, the revised scheme would not overcome these significant environmental concerns. It follows that in neither case does the presumption in favour of sustainable development apply.
46. Returning now to the matter of the protected Dorset Heathlands, if I had come to a different conclusion, it would have been necessary for me to undertake an Appropriate Assessment and further consideration of the likely effectiveness of mitigation measures. In doing so I would have had regard to the provisions of the UU and whether there would be significant effects arising from the

proposal, either alone or in combination with other schemes, as I would have to be certain that the integrity of the protected sites would not be adversely affected. However, as I am dismissing the appeal for other reasons, this assessment has not been necessary.

Conclusion

47. The scheme would cause significant harm to the character and appearance of the area, and the matter of mitigating the harmful impact of the development upon protected species has not been resolved. The proposal would conflict with the development plan taken as a whole, and there are no considerations that outweigh this conflict. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR