



Appeal Decision

Site visit made on 2 August 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 09 September 2022

Appeal Ref: APP/V1260/W/22/3291024

65C Bargates, Christchurch BH23 1QE

- 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 Colsten Trustees Ltd against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 8/21/0665/FUL, dated 23 June 2021, was refused by notice dated 26 August 2021.
 - The development proposed is to extend existing office to create first floor and convert to a 2 bedroom house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development plan comprises the saved policies of the Borough of Christchurch Local Plan (2001) (the Local Plan) and the saved policies of the Christchurch and East Dorset Local Plan – Core Strategy (2014) (the Core Strategy).
3. During the appeal, a new issue arose in relation to the impact of new housing on levels of phosphorus in waste water discharged into the River Avon Special Area of Conservation (the River Avon SAC). The effects of increased recreational activity upon designated sites of the Dorset Heathlands European sites¹ have also been raised by the Council and forms one of its reasons for refusal. It is incumbent upon me as the competent authority to consider whether the appeal proposal would be likely to have a significant effect on the ecological integrity of the Dorset Heathlands sites and, as such, it is necessary to consider that matter as a main issue in this appeal. In that regard, it is also necessary to consider the impact of the appeal scheme on the River Avon SAC and, accordingly I have sought comments from the Appellant, the Council and Natural England on that matter. I shall consider all these matters under a single main issue.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposed development on the River Avon Special Area of Conservation and on the Dorset Heathlands sites,

¹ Dorset Heathlands Special Protection Area and Ramsar site, and the Dorset Heaths Special Area of Conservation.

- The effect of the proposed development on the character and appearance of the surrounding area,
- The effect of the proposed development on the living conditions of nearby residents; and,
- The effect of the proposed development on the living conditions of future residents.

Reasons

Protected Habitats

5. The appeal site lies within 5km of the Dorset Heathland which is designated as a Site of Special Scientific Interest and, as above, as a European wildlife site. The site also falls within the catchment area of the River Avon SAC.

Nutrients Effects

6. The River Avon SAC is a European Designated Site, protected pursuant to the Conservation of Habitats Regulations 2017 (as amended) (the Habitats Regulations). The River Avon is a chalk stream which supports a broad range of flora and fauna to include over 180 species of plants, a diverse fish population and a range of aquatic invertebrates.
7. In March 2022², Natural England informed the Council about unfavourably high levels of phosphates in the River Avon SAC, and that it is likely that the waste water generated by new residential development would create an additional phosphate load which could harm the water quality of the River Avon SAC. Natural England have advised me that, given the appeal proposal is for an additional dwelling, there would be a Likely Significant Effect from the proposed development and that in the absence of mitigation it would not be possible to conclude that there would not be an adverse effect on the integrity of the River Avon SAC. Natural England further comment that the local planning authority have no current strategic mitigation mechanism whereby the additional nutrient load could be offset.
8. It has been put to me by the Appellant that there exist material considerations which demonstrate that the appeal proposal would not result in any Likely Significant Effects on the River Avon SAC and that other planning proposals considered and approved by the Council indicate, given the circumstances of the appeal proposal and those other cited applications approved by the Council, that mitigation for any Likely Significant Effects would not be necessary.
9. The Appellant has referred me to the planning history for the site which confirms that prior approval for change of use of the appeal building to a bungalow was granted by the Council in September 2020. The Appellant has put it to me that that extant prior approval represents a fallback position. Whilst I shall return to this matter below, in my view there is a greater than theoretical possibility that the fallback position would be implemented in the event that this appeal was dismissed and, as such, I consider that the prior approval represents a realistic fallback position which is to be afforded considerable weight in the determination of this appeal.

² Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitat sites, Natural England 16 March 2022.

10. However, whilst acknowledging the fallback position, the appeal proposal would be a project under the Habitats Regulations. Consequently, the project would require a Habitats Regulation Assessment and, in my view, places a statutory duty on me to consider the implications for the River Avon SAC. In that regard the fallback position would not absolve me of the duty to address harm or potential harm arising from the proposal.
11. In respect of the fallback position, it is noted that an informative was attached to that prior approval relating to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and to the Habitats Regulations. Whilst it is acknowledged that the informative refers only to the Dorset Heathlands sites, appropriate assessment of the permitted development in respect of habitat sites, which would also include the River Avon SAC, would be required. With regards to the fallback position, the matter of appropriate assessment under the Habitats Regulations is a separate issue that must be resolved prior to commencement. Whilst the fallback position remains extant, I have not been provided with any evidence that the permitted development has begun. Consequently, the extant fallback position would be caught by the Habitats Regulations in respect of the River Avon SAC as well and, therefore, the extant fallback position does not offer a basis for no mitigation to be considered in relation to the appeal scheme.
12. Therefore, regardless of the fallback position that exists under the prior approval consent, a decision relating to the appeal proposal would need to be made in light of the abovementioned Natural England advice on nutrients and would, therefore, need to demonstrate whether the appeal scheme was nutrient neutral or required further mitigation. Whilst I consider that the fallback position is to be afforded considerable weight in the determination of this appeal with respect of certain elements as described below, relying on the fallback position as a reason to allow a project that, as above, has been assessed as harmful, does not, in my view, alter the need for mitigation to be provided for the harm that would arise from the project. Consequently, I consider that mitigation, or evidence to demonstrate that the proposal would be nutrient neutral, would be required irrespective of the fallback position.
13. Further to the above, the Appellant has also referred me to a recent prior approval application for the change of use of an office to residential, which has been approved by the Council close to the appeal site and within the catchment area of the River Avon SAC. The Appellant's submissions state that Natural England did not object to that nearby recently approved development. Whilst I have carefully considered the Appellant's submissions and evidence, decisions made in respect of other development does not absolve me of the duty to address harm or potential harm arising from this proposal.
14. No evidence has been provided by the Appellant that confirms that the proposed development would be nutrient neutral, and no form of mitigation has been proposed or provided for the impact from increases in waste water discharge. Consequently, without any such proposals to mitigate the effects arising from the occupation of an additional dwelling through waste water discharge, the appeal proposal is likely, alone or in combination with other projects, to have an adverse effect on the ecological integrity of the River Avon SAC.

15. During the course of the appeal, further information was provided by the Council in respect of phosphate loads in the River Avon SAC. The additional information received advises that it is the Council's view that the River Avon SAC is already saturated with phosphates upstream from Christchurch and that overflow from the Christchurch Waste Water Treatment Works (the CWWTW) would not make the situation any worse.
16. Nonetheless, the Council submissions also provide that Natural England has previously advised that evidence would be required to support the Council's contention that the River Avon SAC is already saturated with phosphates and that it would therefore be highly unlikely that qualifying species would not be adversely affected by overflow from the CWWTW. However, the Council has also confirmed that it is yet to commission the required evidence. Therefore, in the absence of evidence to the contrary and taking a precautionary approach, as above I must conclude that the proposed development is likely, alone or in combination with other projects, to have an adverse effect on the ecological integrity of the River Avon SAC.

Recreational Impacts

17. The Dorset Heathlands European sites host protected priority habitats and species. Qualifying features include Dartford Warbler, Nightjar, Woodlark, Hen Harrier and Merlin as well as other typical species of lowland heathland, wetlands and dunes. Their conservation objectives include ensuring the integrity of the sites is maintained, and that the sites contribute to achieving the favourable conservation status of their qualifying features.
18. The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (the DHPF), indicates that the associated increases in population, in combination with other development, are likely to place increased pressure upon the protected heathland, including through increases in wild fires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion, and disturbance by humans and their pets.
19. The Appellant has not contended that the presence of the fallback has meant there is no need to mitigate the impact of the proposal on the Dorset Heathland sites. Rather, the appeal has been accompanied by a unilateral undertaking which seeks to provide a financial contribution towards Heathland Strategic Access Management and Monitoring in line with the DHPF. The submitted planning obligation seeks to provide the required financial contribution, with those contributions to be spent on projects to mitigate the adverse impact of the development on the integrity of the Dorset Heathlands European sites.
20. However, the submitted unilateral undertaking is not complete in terms of definitions and is unsigned. I, therefore, do not have any suitable or enforceable mechanism before me which would secure the required financial contribution described above. Consequently, taking a precautionary approach, I must proceed on the basis that the proposal would have a significant adverse impact on the designated Dorset Heathlands European sites. Given that the proposal would have a significant adverse effect on the integrity of the designated sites, it would conflict with Policy ME2 of the Core Strategy which, amongst other things, requires mitigation measures to be provided as part of residential development proposals.

21. The main parties in this appeal have indicated that it is anticipated that a completed and signed planning obligation would be submitted during the course of this appeal. However, as at the date of determination of this appeal no completed or signed planning obligation has been provided. Given that the evidence confirms that such a planning obligation would not secure any form of mitigation in respect of the above regarding nutrient effects on the River Avon SAC, I have not pursued this matter further with the Appellant or the Council.

Character and Appearance

22. The appeal site is located within an urban area of Christchurch and is accessed from Bargates by a narrow existing vehicular access which also serves as access to a car park. The appeal building is a single storey structure with a flat roof, and which the evidence indicates is currently in use as office space. The site is positioned to the rear of 65-69 Bargates which is a three storey building in mixed use as commercial space at ground floor and with residential accommodation above. Based on observations made on my visit, the surrounding area is predominately characterised by mixed commercial units and residential flats fronting onto Bargates, backland development and more modestly sized dwellings arranged in terraces located on nearby streets which connect with Bargates.
23. The appeal proposal seeks to extend the existing office space to provide a first floor and to convert the building into a two bedroom two storey dwelling. The appeal proposal would result in a detached residence with a pitched roof in a contemporary design that reflects the appearance of the existing building at the site. The appeal proposal would sit within a small, extremely constrained plot with very limited separation distance between the appeal building and those above described buildings which front onto Bargates, and in very close proximity to the substantial neighbouring building at 61-63 Bargates. The appeal building would abut the site boundary on three sides and, in combination with the above, would appear somewhat cramped within its plot.
24. However as noted above, in part the surrounding area is characterised by backland development, and as I observed on my visit, there are other examples of such forms of backland residential development nearby, which similarly are positioned in relatively close proximity to the rear of buildings which front onto Bargates. In that regard, the appeal scheme would replicate the position in terms of plot size and proximity to boundary as with other nearby examples including as at 20A Avon Buildings.
25. For the above reasons the appeal proposal would be comparable to other nearby backland residential development in of terms scale, visual impact, layout, and site coverage. As such the proposed development would accord with the provisions and aims of Policy HE2 of the Core Strategy and would comply with Policy H12 of the Local Plan.

Living Conditions of Nearby Residents

26. As noted above, the appeal site is located to the rear of the building at 65-69 Bargates which includes residential accommodation at first and second floors. The Council have put it to me that the proposal would have an overbearing effect on the living conditions of residents at that building, unacceptably affecting the outlook from the rear windows.

27. 69 Bargates does not look out over the appeal site and given its siting away from the rear of that residential accommodation, the scheme would not adversely affect the living conditions of residents at 69 Bargates. In respect of the accommodation at second floor level within 65 and 67 Bargates, the appeal scheme would be of a height that would allow for the existing outlook from rear windows on that floor, over the site being retained and, therefore I find no harm in that regard.
28. As I saw on my visit, there are two first floor rear facing windows at 65 Bargates. Whilst the appeal proposal would be located in relatively close proximity to the rear of 65 Bargates, the proposed dwelling would be sited such that outlook from one of those rear facing windows would be retained. The outlook from the second window would be directly towards the proposed dwelling. However, the roof form of the proposed dwelling would be angled away from the neighbouring building. In that regard, while the outlook from the second window would be altered to a small degree, it would not result in a significant change and, in my view, would not result in an oppressive outlook or unacceptable living conditions of occupants of that residential accommodation.
29. The rear elevation of the ground floor commercial space at 67 Bargates would also be in close proximity to the proposed dwelling. However, at the rear of 67 Bargates the first and second floor residential accommodation is significantly set back from the ground floor elevation. It was noted on my visit that 67 Bargates is dual aspect with a balcony space to the front. Given that views from the first and second floor windows at the rear of 67 Bargates is somewhat restricted by the flank walls to the rear of 65 and 69 Bargates, in combination with the separation distance to those rear facing windows at 67 Bargates, I do not find that the appeal proposal would have an overbearing effect or result in unacceptable living conditions for residents in terms of outlook.
30. For the above reasons, the proposed development would not conflict with Policy HE2 of the Core Strategy which, amongst other matters, requires that development to be compatible with its surroundings in terms of relationship to nearby properties including minimising general disturbance to amenity.

Living Conditions of Future Residents

31. The proposed dwelling would be a two bedroom residence and the Council have confirmed that there is a need for two and three bedroom dwellings within Christchurch. Internally the proposed unit of accommodation would meet the required standards in terms of space provision. However, the external amenity space to be provided is extremely limited in terms of area and, in my view, would not be sufficient to meet the everyday needs of future occupants.
32. Whilst it is acknowledged that the appeal scheme would also provide an enclosed balcony area and would be located relatively close to areas of public open space, those additional matters would not provide suitable mitigation for the inadequate level of external amenity space at the site.
33. Given the position with regards to external amenity space, the appeal proposal would conflict with Policies HE2 and LN1 of the Core Strategy which, amongst other matters, seeks to ensure high quality design that meets minimum space requirements both internally and externally.

34. Notwithstanding the appeal scheme's conflict with the above policies of the development plan, planning history for the site confirms that prior approval for change of use of the appeal building to a bungalow was granted by the Council in September 2020. The Appellant has put it to me that that extant prior approval represents a fallback position.
35. In light of the submissions in this appeal, in my view there is a greater than theoretical possibility that the fallback position would be implemented in the event that this appeal was dismissed and, as such, I consider that the prior approval represents a realistic fallback position.
36. From the evidence submitted, the fallback position would result in a residential dwelling that would not provide any garden amenity space. Consequently, I judge that the fallback position would be more harmful to the living conditions of future occupants than the appeal proposal. Given that I have found that there is a greater than theoretical possibility that the fallback position would be implemented in the event that this appeal was dismissed, and would be more harmful in respect of living conditions of future occupants, this is a factor to which I attach considerable weight.

Planning Balance

37. It is not disputed that the Council is unable to demonstrate a five year housing land supply. Paragraph 11(d) of the National Planning Policy Framework (the Framework) states that in such circumstances permission should be granted unless the application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the development. Pursuant to footnote 7, this includes habitats sites such as the River Avon SAC and Dorset Heathlands European sites identified above in the first main issue. Having regard to footnote 7 and paragraph 180 of the Framework, and given the conclusions on the first main issue, there exists a clear reason to refuse the proposal and the presumption in favour of sustainable development does not apply.
38. Considering the international importance of the protected habitats identified above, and my responsibilities as competent authority in that regard, the benefits of the scheme do not outweigh the harm that I have identified. Consequently, for the reasons given above, and taking into account all matters raised, I find that the proposal would conflict with the development plan when taken as a whole. There are no other considerations, including the Framework, that outweigh that conflict.

Conclusion

39. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR