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## Appeal Decision

Site visit made on 23 August 2022

**by R E Jones BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 October 2022**

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**Appeal Ref: APP/D1265/W/21/3286052**

**55 Farm Road, West Moors BH22 0JE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
  - The appeal is made by Clemdell Ltd against the decision of Dorset Council.
  - The application Ref 3/20/1621/PIP, dated 7 September 2020, was refused by notice dated 6 May 2021.
  - The development proposed is erection of single storey dwelling and associated site works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The proposal is for permission in principle. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted<sup>1</sup>. All other matters are considered as part of the subsequent Technical Details Consent application, if permission in principle is granted. I have determined the appeal accordingly.
4. During the course of the appeal, I have identified possible effects of increased recreational activity upon the Dorset Heathlands, an area covered by a number of European and international designations (designated sites) that include the Dorset Heathland Special Area of Protection (SPA) and the Dorset Heaths Special Area of Conservation (SAC). Although not forming part of the Council's reasons for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the ecological integrity of the designated sites in accordance with the Habitats Directive<sup>2</sup>. For this reason, it is necessary to consider this matter as a main issue as it relates to the general scope of considerations for permission in principle.
5. To inform my assessment of the appeal in relation to this main issue the Council has provided details of the relevant designated sites together with other relevant documents including its mitigation strategy and supporting evidence base for the

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<sup>1</sup> Paragraph: 012 Reference ID: 58-012-20180615, Permission in principle guidance, Ministry of Housing, Communities and Local Government, published 28 July 2017, last updated 15 March 2019.

<sup>2</sup> Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

avoidance of impacts on the SACs/SPAs. I have also sought comments from the appellant and Natural England on these matters.

### **Main Issue**

6. Having regard to the preliminary matters together with the Council's decision notice, the main issue is whether the site is suitable for residential development having regard to its location, and the amount of development, including the effect on the integrity of the Dorset Heathland SPAs and SACs.

### **Reasons**

7. The appeal site comprises a grassed area with a frontage onto Birch Grove. A belt of tall mature trees runs along the site's southern boundary. The site forms part of a large housing estate, comprising a mix of dwellings, that includes several small bungalows nearby.
8. The appeal site is also within 5km of the Dorset Heathlands SPA, Special Area of Conservation, SSSI and Ramsar Site (collectively referred to as the Dorset Heathlands). The Dorset Heathlands are an extensive network of lowland heath within south-east Dorset, which are recognised for their national and international importance for nature conservation.
9. The proposed development has the potential to lead to increased recreational use of the Dorset Heathlands, owing to the proposed additional residential unit. In combination with other similar small-scale development, this means the proposal could result in increased disturbance to the protected habitats and species found in each of these protected areas. As a result, it is not possible to rule out likely significant effects on the Dorset Heathlands.
10. Nonetheless, The Dorset Heathlands Planning Framework (2020 – 2025) Supplementary Planning Document (April 2020) (the SPD) sets out measures to help mitigate against the potential effects from new housing. This mitigation is achieved through a financial contribution of £406 per new dwelling towards Strategic Access Management and Monitoring (SAMM). The primary objective of the SAMM is to raise awareness of the issues and value of the protected sites and includes employing wardens to manage visitor pressures on the heathland; and delivering awareness and education programmes in local schools, on the heaths and through local communities. SAMMs also pay for the ongoing monitoring of a sample of heathland birds, visitor access patterns and the effects of new development and crucially whether this strategy is effective.
11. In this context, it has been suggested by the main parties that any likely significant effects of the proposed development upon the Dorset Heathlands could be avoided or mitigated via financial contributions made under the Community Infrastructure Levy (CIL). This approach follows that laid out in the SPD.
12. The PPG states that providing the LPA is satisfied, after taking account of mitigation measures, and concluding that the development will not adversely affect the integrity of the protected site, then, subject to compliance with other statutory requirements regarding the permission in principle process, it can grant permission in principle.
13. Yet, the means, proposed by the main parties, of securing the mitigation through the CIL contributions only apply to development consented through the permission in principle route if technical details consent has been granted<sup>3</sup>. Charges will

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<sup>3</sup> PPG Paragraph: 023 Reference ID: 58-023-2017072.

become due from the date that a chargeable development is commenced. Consequently, mitigation secured through CIL cannot be secured at this stage and therefore there is no mechanism in place to overcome the likely significant effects to the designated sites I have identified.

14. I have considered whether the measures outlined in the SPD could be secured through other means such as a planning obligation. But, aside from not having one before me, the PPG states that planning obligations cannot be secured at the permission in principle stage, only at the technical details stage<sup>4</sup>.
15. Waiting until the technical details stage for the suggested mitigation to be secured would not provide the necessary certainty that an adverse effect on the integrity of the SPA/SAC would be avoided as I cannot be certain that this would occur. There is further doubt as I am also reliant on the Council approving the technical details application.
16. Therefore, without any proposals that securely mitigate the effects arising from the occupation of a further dwelling through recreation pressure, the development is likely to have an in-combination adverse effect on the integrity of the Dorset Heathland SPAs/SACs. Consequently, and to that extent, that it relates to the principle of development, the scheme would be unacceptable in terms of its location and amount of development.
17. The site has a wide roadside frontage and rear boundary. It is somewhat shallow in terms of its depth, but I note from the submitted location plan and my site inspection that it is similar in terms of area and shape to other residential plots on the estate. It is likely that a dwelling would occupy a large portion of the site's depth, but with additional surplus land to the side to accommodate a modest, albeit functional area of amenity space. On this basis, it is considered that a modest dwelling, of similar scale to others in the locality would assimilate satisfactorily into its context.
18. The roads surrounding the site are typical of those serving a planned housing estate and incorporate wide carriageways suitable for two-way traffic, footways and cul-de-sacs. I noted that traffic and vehicle movements during the time of my visit were low. The site's open frontage would allow for vehicles to leave and enter the site with good visibility. Parking at the site would need to be agreed at the technical details stage, although I note that the Council's Highway advisers have raised no objection to the scheme.
19. The trees running along the site's rear boundary have large crowns that would partially over-sail the appeal site. There is the suggestion from the Council and third parties that the roots of those trees could be compromised by the construction of the proposed dwelling, however, I have no clear evidence that would be the case. Nonetheless, this level of detail can be assessed at the technical details stage as well as any mitigatory measures in the event that roots are affected.
20. There is also concern that the presence of the trees could overshadow the plot and undermine the availability of amenity space for future occupiers. But there are parts of the plot that are not over sailed by the tree canopies and there would, in my judgement, be sufficient land for a functional amenity area that would be exposed to acceptable levels of light and outlook given the largely open aspect along the site's frontage.

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<sup>4</sup> PPG Paragraph: 022 Reference ID: 58-022-20180615.

21. It is acknowledged that the dwelling and curtilage land at No 57 Birch Grove is located close to the site's side and rear boundary. Nevertheless, the site is sufficiently wide and would allow the placing of a dwelling away from the parts of No 57 that could be most affected. The precise position of the dwelling's layout and scale would be considered at the technical details stage.
22. The proximity of the public footpath is also noted, however, there would be an opportunity at the technical details stage for the appellant to demonstrate that issues such as privacy and physical encroachment on the path could be resolved through the submission of acceptable layout, scale and appearance details.
23. In conclusion, I have found that the amount of development, insofar as it relates to trees and site boundary constraints, would be acceptable in principle and accord with relevant aspects of the development plan, albeit subject to assessment at the technical details stage. However, the appeal site would be unsuitable for residential development with regards to the amount of development and its location, as it relates to its effect on the integrity of the Dorset Heathland SPAs and SACs. The proposal would therefore be contrary to Policy ME2 of the Christchurch and East Dorset Local Plan, Part 1 – Core Strategy (adopted April 2014) and the SPD. Together these require any residential proposals within 400m and 5km of the Dorset Heathland designated sites to provide mitigation in accordance with the SPD. The proposal also fails to accord with the guidance in the PPG referred to earlier.

### **Other Matters**

24. There is some dispute between the main parties whether or not the Council currently has a five-year supply of housing land (5YHLS). Even if there was not a 5YHLS, and Paragraph 11 of the Framework was engaged, Paragraph 11(d)(i) of 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 instances of harm to designated habitat sites such as SACs and SPAs. The Framework therefore provides a clear reason for refusing the proposal in any event, and the presumption in favour of sustainable development is not engaged.
25. The appeal site is within a short distance of local shops, services and public transport connections. It would also be an acceptable land use given the wider residential character of the area. However, these are neutral factors, rather than scheme benefits, and I have not given them any weight in my assessment.
26. Several third-party representations have raised concerns in respect of various matters that include the site's history and neighbouring land use designations. Whilst confirmation could have been sought from the main parties as part of this appeal, as I am dismissing the appeal on other grounds, ultimately this would not have changed the outcome of the decision. I therefore do not intend to discuss those matters further.

### **Conclusion**

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

*RE Jones*

INSPECTOR