



## Appeal Decision

Site visit made on 16 January 2023

**by S Edwards BA MA TCP MRTPI**

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

**Decision date: 2 March 2023**

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**Appeal Ref: APP/D1265/W/22/3298691**

**Tower House, Tower Hill, Bere Regis BH20 7JA**

- 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 Blackmore (Purbeck and Dorset Homes Ltd) against the decision of Dorset Council.
  - The application Ref 6/2021/0249, dated 30 April 2021, was refused by notice dated 11 March 2022.
  - The development proposed is demolish existing property and erect 5 detached properties with associated parking, access and landscaping.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The main parties have referred to the preparation of an emerging Purbeck Local Plan, which was submitted for examination in January 2019. The emerging Local Plan has reached an advanced stage of preparation, but has yet to be found sound. Therefore, only moderate weight can be ascribed to the policies contained within the plan at this stage.

### Main Issues

3. The main issues are:
  - Whether the proposal would preserve or enhance the character or appearance of the Bere Regis Conservation Area;
  - The effect of the proposal on the living conditions of the neighbouring occupiers of The Poppies and Meadow View Barn, with particular regard to privacy; and
  - The effect of the proposal on biodiversity.

### Reasons

#### *Conservation Area*

4. The appeal site comprises a two-storey dwelling set within a spacious plot, which lies in an elevated position on the hillside, notably in relation to the dwellings fronting Butt Lane. The site's southern boundary is defined by a steep vegetated bank down to Tower Hill. The appeal site is located in the village of Bere Regis, a large part of which is designated as a conservation area. It draws its special interest from its rich collection of historic buildings, but also the form

of the settlement against a rural backdrop and its layout which, as noted in the Conservation Area Appraisal<sup>1</sup> (CAA), is recognised as having post Normal Conquest influences with linear formats served by back lanes.

5. The site lies within the Back Lanes Sub-Area of the Bere Regis Conservation Area, which features the continued survival of a complete and very rare example of medieval back lanes. The CAA notes that these lanes retain a rural character, principally derived from the banks, hedges and soft landscaping and their relationship with the open countryside surrounding the village. There is no doubt that the site displays many of these key characteristics and thus makes an important contribution to the special interest of the Conservation Area.
6. The appeal scheme would result in a significant intensification of development on the plot, having firstly regard to the number of units proposed. In addition to the footprint of the proposed dwellings, extensive areas of hardstanding would be required for the provision of access, parking and turning, as well as the creation of a passing space on Tower Hill.
7. These elements, together with the regimented layout of the appeal scheme, would give the development a suburban appearance, which would erode the rural qualities of this part of the Conservation Area, and consequently compromise the special interest of this designated heritage asset. Due to the site's elevated position, the development would be very prominent within the street scene, which would add to the harm caused to the Conservation Area.
8. The proposed development would cause less than substantial harm to the special interest of the Bere Regis Conservation Area, to which I ascribe considerable importance and weight. In accordance with paragraph 202 of the National Planning Policy Framework (the Framework), the identified harm should be weighed against the public benefits of the proposal.
9. The appeal scheme would enable the construction of additional houses, which can be considered as a public benefit. Whilst the provision of a passing space to the front of the site may be regarded as a betterment by the Local Highway Authority and other interested parties, I note that this is not required to make the development safer, and given that this would add to the harm which the development would cause to the Conservation Area, limited weight is afforded to this consideration. Overall, there are no presented public benefits, which would outweigh the identified harm.
10. For the foregoing reasons, the appeal scheme would fail to preserve the character and appearance of the Bere Regis Conservation Area. It would therefore fail to accord with section 16 of the Framework and Policy LHH of Purbeck Local Plan Part 1 - Adopted November 2012 (the LPP1), which expects development proposals to conserve the appearance, setting, character, interest, integrity, health and vitality of landscape (including trees and hedgerows) and heritage assets.

#### *Living conditions*

11. The proposed dwellings on plots 1 and 2 would be sited close to the site's road frontage, and the separation distance between these units and the front elevations of the neighbouring properties on the opposite side of Tower Hill would therefore be limited. I accept that there are many examples, particularly

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<sup>1</sup> Bere Regis Conservation Area Appraisal (July 2002).

in historic areas, where the separation distance between the front elevations of neighbouring buildings is similar to what is being proposed here.

12. However, the front elevations of the proposed dwellings would include a number of ground and first floor windows serving habitable rooms, which would look onto the properties on the opposite side of the road. The Poppies, in particular, also has several windows both at ground floor and first floor levels, which serve habitable rooms. The proposed arrangement would to my mind appear unneighbourly, as it would increase the perception of overlooking and loss of privacy for the occupiers of The Poppies. This would negatively impact on the enjoyment of their property.
13. With regard to the impact on the living conditions of Meadow View Barn, I note that the affected windows looking towards the appeal site serve the hall at ground floor level and landing upstairs. The effect that the proposed arrangement would have on the privacy and outlook for these neighbouring residents would not be harmful to the extent that it would, on its own, justify withholding the grant of planning permission. Nevertheless, it does compound other issues identified with regard to the impact of the proposal.
14. Given the above, I find that the proposed development would cause unacceptable harm to the living conditions of the occupiers of The Poppies, with particular regard to privacy. It would therefore fail to meet the design aims of paragraph 130 of the Framework, and conflict with Policy D of the LPP1 and the Purbeck District Design Guide Supplementary Planning Document. Amongst other things, Policy D seeks to ensure that development proposals avoid and mitigate the effects of overlooking.

### *Biodiversity*

15. Paragraph 174 of the Framework stresses that planning policies and decisions should contribute to and enhance the local environment in a number of ways, including provision of net gain for biodiversity. The appeal scheme is supported by a Biodiversity Plan, which includes a number of mitigation measures to be provided as part of the development. Additionally, compensation is required for the loss of 0.09 hectares of grassland, as well as a 10% biodiversity net gain increase, which the Council seeks to secure through the completion of a Section 106 Legal Agreement or Unilateral Undertaking, in accordance with the Dorset Biodiversity Appraisal Protocol.
16. A signed and dated Unilateral Undertaking, pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended), has been submitted by the appellant during the course of the appeal, which would secure the provision of a financial contribution towards Biodiversity Net Gain. However, there is very limited information before me setting out how the financial contribution would be spent to mitigate the effects of the development. As the submitted obligation is in the form of a Unilateral Undertaking, I am also concerned that it does not bind the Council to spend the contribution on measures which would leave the natural environment in a measurably better state than it was beforehand<sup>2</sup>.
17. I accept that the amount secured within the Undertaking is relatively modest and would represent a small component of the Council's Biodiversity

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<sup>2</sup> National Planning Practice Guidance – Natural Environment (Paragraph: 020 Reference ID: 8-020-20190721).

Compensation Framework. However, and whilst I have no reason to doubt that the Council would not spend the financial contribution in the manner intended, the Unilateral Undertaking does little more than oblige the appellant to make the payment. For these reasons, the planning obligation would not accord with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations.

18. Taking a precautionary approach, I cannot therefore be satisfied that the appeal scheme would not have an adverse effect on biodiversity, and would subsequently accord with the aims of Section 15 of the Framework and Policy BIO of the LPP1, which notably seeks to protect Purbeck's biodiversity.

## **Other Matters**

### *Protected Sites*

19. The appeal site lies within proximity to Black Hill Heath, which is designated as a Site of Special Scientific Interest (SSSI), due to its heathland habitats and associated plant and animal species. Black Hill Heath SSSI forms part of the Dorset Heathlands Special Protection Area, the Dorset Heaths Special Area of Conservation and Ramsar site, as designated under the Habitats Regulations.
20. Natural England has advised the Council that the appeal scheme would have a likely significant effect on the integrity of this sensitive area (either individually or in combination with other plans or projects), notably by reason of additional recreational pressures resulting from residential development, unless suitable mitigation is provided.
21. Moreover, the appeal site lies within the catchment of Poole Harbour, which is notified as a SSSI for the special interest of its wetland birds, wetland and intertidal habitats and subtidal habitats and invertebrates. Poole Harbour is also designated as a SPA and Ramsar site. Further concerns have been raised by Natural England regarding the high levels of nitrogen based nutrients entering the Poole Harbour catchment, which are notably associated with increased waste water from residential development. This would also have a likely significant effect on the protected sites, unless an appropriate level of conditions is secured to adequately offset nitrogen, thus ensuring that the development remains nutrient neutral.
22. As the appeal is being dismissed on other substantive grounds, this is not a matter which needs to be considered further here. However, had the development been considered acceptable in all other respects, I would have sought to carry out an Appropriate Assessment, to ensure the proposal's compliance with Habitats Regulations.

### *Nearby Listed Buildings*

23. No concerns have been raised by the Council regarding the effect of the development on the nearby Grade II listed buildings known as 67 Butt Lane and the Old School House. Having regard to the available evidence, there are no reasons for me to reach an alternative view, and I therefore confirm that the development would preserve the significance of these listed buildings, as derived from their respective settings.

### *Housing Land Supply*

24. The Council is currently unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 11 d) of the Framework, as directed by Footnote 8, advises that the policies which are most important for determining the application are deemed out-of-date, and planning permission should be granted. This presumption does not however apply where the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
25. As detailed in Footnote 7 to the Framework, such areas or assets of particular importance include designated heritage assets. The appeal scheme would fail to preserve the character and appearance of the Bere Regis Conservation Area, and the policies of the Framework in that regard provide a clear reason for refusing the appeal scheme. The tilted balance set out in paragraph 11d) of the Framework is therefore not engaged in this instance.

### **Conclusion**

26. There are no material considerations, which indicate that the appeal should be determined, other than in accordance with the development plan. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*S Edwards*

INSPECTOR