
Appeal Decision

Site visit made on 24 January 2023

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2023

Appeal Ref: APP/V1260/W/22/3305774

**The garage between 22 Banks Road and 1 Panorama Road, Poole
BH13 7QE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Mullins against BCP Council.
 - The application Ref APP/21/00880/F, is dated 29 June 2021.
 - The development proposed is to add an additional 2 storeys to the existing garage, and other works to create a pair of semi-detached houses.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Mullins against BCP Council. This application is the subject of a separate decision.

Procedural Matters

3. If the Council had been in a position to determine the application, it would have refused planning permission for four reasons. The first relates to the development failing the Sequential Test as there are other reasonably alternative sites with lower flood risk that could accommodate the development.
4. The Council's second reason would have been that the development by virtue of its unusually narrow plot would be an incongruous and cramped development that would sit uncomfortably in its setting, failing to respect the prevailing pattern of development that is characteristic of the area outside of the sustainable transport corridor.
5. The third reason would have been that the application site is within 5km of the Dorset Heathlands Site of Special Scientific Interest (SSSI), the Dorset Heathlands Special Protection Area (SPA), Ramsar site and the Dorset Heaths Special Area of Conservation (SAC), and that the applicant has failed to demonstrate that the proposal would not have an adverse effect upon the protected heathlands. In the absence of any

form of acceptable mitigation the development is likely to have an adverse effect on the special features of the heathlands.

6. The fourth reason would have been that the application site is within close proximity of Poole Harbour which is an SSSI, SPA, and Ramsar site and that the applicant has failed to demonstrate that the proposal would not have an adverse effect upon these habitat sites. In the absence of any form of acceptable mitigation the development is likely to have an adverse effect on the special features of the harbour.

Main Issues

7. The main issues are: firstly, whether the proposal would comply with national and local planning policy which seeks to steer new development away from areas at the highest risk of flooding, and to ensure that the development is flood resilient for its lifetime; secondly, the effect of the proposed development upon the character and appearance of the area; thirdly, the impact of the proposal upon the integrity of the Dorset Heathlands habitat sites and upon the Poole Harbour habitat sites.

Reasons

Flooding

8. The garage that is the subject of this appeal is positioned close to the junction of Banks Road with Panorama Road, within a long, narrow plot of land that is bounded by fences and hedges. The garage is described by the appellant as a residential garage ancillary to the amenity of a dwelling, being used for domestic storage. From the evidence before me, including what I saw at my site visit the garage is a detached building within a discrete plot and has no physical or functional linkage with any of the surrounding residential properties.
9. The appellant refers to the site being within a Flood Zone 1 area, but both the Environment Agency and the Council have identified it also falls within a future flood risk area. Given this, the proposed dwellings would be at risk from coastal flooding and surface water flooding within the lifetime of the development. The National Planning Policy Framework (the Framework) requires that inappropriate development in areas at risk of flooding should be avoided by directing development away from the areas at highest risk. This includes future risks.
10. The appellant considers that as the proposal is for a change of use that it should not be subject to the Sequential Test. However, the proposal is not just for a change of use but to extend the garage vertically so as to create two new dwellings. Both the Framework and the Planning Policy Guidance (the Guidance) make it clear that buildings used for dwelling houses are more vulnerable under the flood risk vulnerability classification. Within the lifetime of the development the new homes would be in an area at increased flood risk in the future, and in such cases there is a requirement for the appellant to show that the

development meets the objectives of the Framework's policy on minimising flood risk. Moreover, the Guidance makes it clear that the Sequential Test should be applied to major and non-major development at risk of flooding, and this includes where the Strategic Flood Risk Assessment (SFRA) indicates there may be a risk of future flooding.

11. The aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source, and if this is not possible, then the Exception Test may have to be applied. The appellant's Flood Risk Sequential Test (July 2022) has concluded that a Sequential Test is required, but that there were no sites considered to be suitable, available, deliverable and developable alternatives to the appeal site. An assessment of reasonably available land is not restricted to that which is owned by the appellant, and in this case, sites have been discounted on the basis that they would be uneconomic for the appellant to develop. However, the Guidance provides a definition of what is a reasonably available site, and this could include a series of smaller sites and / or part of a larger site, none of which needs to be owned by the appellant.
12. The Council has no five year housing land supply, and the appellant has based their Sequential Test upon the list of sites in the Council's Position Statement, coming to the view that all the sites on this list would be unavailable as alternatives to the appeal site as they are required as part of the identified housing need. The Guidance makes it clear that the absence of a housing land supply is not a relevant consideration for the Sequential Test for individual applications. The Council has taken the view that there are alternative sequentially preferable and available suitable sites, albeit the appellant did not explore these alternatives. National policy makes it clear that it is the responsibility of the appellant, not the Council, to demonstrate the availability of alternative sites, and for whatever reason the appellant did not pursue the matter further. Thus, the scheme fails to satisfy the Sequential Test.
13. The Exception Test should only be applied following the application of the Sequential Test where it has been demonstrated that it is not possible for development to be located in areas with a lower risk of flooding. Having regard to the failure of the scheme to comply with the Sequential Test, there is no need for me to consider the exception test, although in this instance the appellant considers future occupiers would not be at risk of flooding. The houses are considered to be flood resilient as a result of a variety of measures, including a raised slab level, storage and access space only to occur on the ground floor, and the balconies could become boat jetties in times of flooding. However, these measures are based on the assumption that future residents could shelter in situ or be safely removed from the houses.
14. Furthermore, the appellant has objected to the Council's suggested conditions. The production of a flood warning and evacuation plan for all future occupants, and flood mitigation measures, including the non-

habitable use of the ground floor, are regarded as being unreasonably onerous and premature given that the site is currently within a Flood Zone 1 area. Nevertheless, the concern in this case is the risk of future flooding, and the design of the ground floor could easily be used by future occupiers as habitable space. Even low levels of flooding can pose a risk to people in situ because of the presence of unseen hazards and contaminants in the floodwater or the risk that people remaining would need supplies and may require medical attention. The failure to restrict the use of the ground floor and the absence of an emergency plan for future occupiers are omissions that could put people's lives at risk.

15. Other appeal decisions have been referred to by the parties, and those mentioned by the appellant provide examples of flooding cases in other areas where the Councils cannot demonstrate a five year housing land supply (ref: APP/D0840/W/16/3143424 and APP/F0114/W/20/3244862). The former was for the residential redevelopment of a site, whilst the other was for student accommodation, and given this, neither forms a direct comparison with the proposal before me. The differences are such that these cases do not determine that I should allow the appeal, particularly as since these decisions were made, national policy and guidance has been altered.
16. The appellant has also referred to a number of applications and appeals highlighting the Council's inconsistent application of flood risk policy, and the Council accept this to be the case. Little detail of these cases have been provided, but notwithstanding this, I am obliged to determine the appeal on the basis of current national policy and guidance. For whatever reasons previous decisions of the Council have been made, including the allocation of housing sites in the development plan, given the recent national policy and guidance changes, these cases and allocations do not form binding precedents for allowing the appeal.
17. Ultimately the decision maker needs to be satisfied that a development would be safe throughout its lifetime and would not lead to increased flood risk elsewhere. There would be some limited benefits arising from the provision of two additional high-quality homes on a brownfield site at a time when the Council has no five year housing land supply. However, these benefits would not outweigh the future flood risk consequences that would arise. As the proposal would be for a more vulnerable use in an area with a high risk of future flooding, it is imperative that the strict tests to protect people and property are observed, and when these tests are not met, development should not be allowed.
18. In this case the Sequential Test has not been met, nor has it been demonstrated that the development would not endanger future occupiers for the lifetime of the development. This would be contrary to the requirements of the Framework and to those of Policy PP38 of the Poole Local Plan (2018) (LP). This policy seeks amongst other things, that development within future flood risk zones will only be permitted

following a Sequential Test that demonstrates there are no reasonably available appropriate alternative sites in areas at lower risk from flooding.

Character and Appearance

19. The garage is positioned within a mostly residential area that comprises a variety of ages and styles of houses, bungalows and apartments. The garage has been historically annexed from any of the surrounding dwellings, and it has a drive and vehicular access onto Banks Road. To the rear is a grassed area with seating at one end. The site is bounded by mature hedgerows, walls and fences, and growing close to the site boundary in the grounds of the apartment block at 22 Banks Road (No 22) are a row of tall, protected cypress trees.
20. The garage extends across the width of the site and is very close to the chapel of St Nicholas. The garage is a single storey flat roofed building with a modest and legible functional appearance, particularly as its timber doors open out onto a drive. The form and size of the garage, along with it being set back from the public highway gives the building a recessive appearance within the area.
21. The proposed houses would extend the garage upwards, providing an additional two floors with deep balconies. The houses would have flat roofs and the walls would be of a variety of materials, with the use of seamed copper providing a strong horizontal emphasis. However, the narrow width of the plot, along with the depth of the building, and its increased height would combine to give a bulky and top-heavy appearance to the dwellings. There are a variety of sizes and styles of homes within the area, but despite this the large size of a building that would be positioned within a narrow plot would appear conspicuously cramped and constricted.
22. Plot sizes for nearby dwellings vary, ranging from generous to much smaller ones. However, in most cases the dwellings are set away from the side boundaries of their plots. The neighbouring chapel and the linked bungalows are modest single storey buildings within relatively small plots, with the former being extremely close to the flank wall of the garage. Given this proximity, the proposed dwellings would appear harmfully constricted within such a context, and the large size and height of the building would be such that it would have an overwhelming impact upon these modest single storey dwellings and the chapel. The incongruity of this juxtaposition would harmfully draw the eye.
23. The houses would be set away from the apartment block at No 22, but when approaching from the north, the houses would form an overbearing backdrop to the bungalows and the chapel that would appear harmfully dominant. Such an impact would be visible from long distances away. There is some support for the scheme, including that for the innovative design of the dwellings, and the considered design of the front elevation of the building would avoid upper floor symmetry to

give the appearance of a single dwelling. Nevertheless, the ground floor would have a legible appearance as two dwellings, thereby drawing the eye to the restricted dimensions of the houses. In addition, the presence of a trapezoidal shaped carport and the car turntable would also serve to exaggerate the cramped nature of the development.

24. The appellant has drawn my attention to correspondence with the Council concerning the conversion of the garage into two apartments. I have little evidence before me regarding the detail of the proposal, albeit the scheme would be for apartments rather than houses and that this proposal has also been refused. Having regard to the refusal of permission and that there are differences between this scheme and that before me, the weight I can attribute to this comparison is limited.
25. Thus, the proposed dwellings would unacceptably harm the character and appearance of the area, and the conditions suggested by the parties would not overcome this fundamental harm. The scheme would fail to accord with LP Policies PP27 and PP28. These policies seek amongst other things, a good standard of design that reflects or enhances local patterns of development, and that plot severances should only occur where there is sufficient land to enable a type, scale and layout of development which would preserve or enhance the area's residential character, thereby reflecting objectives of the Framework.

Habitat Sites

26. The appeal site is within 5km of the Dorset Heathlands, which are an extensive network of lowland heaths nationally and internationally recognised. These heathlands host priority habitats and species, including birds, lizards and snakes as well as other species typical of lowland heathland, wetlands and dunes. In addition, the site is also within the zone of influence of the Poole Harbour habitat sites, which are nationally and internationally important for rare, vulnerable and migratory birds, and their supporting habitats of seagrass, shallow inshore waters, intertidal sediments, saltmarsh, and reedbeds. The heathlands and Poole Harbour are under significant pressure from public access and use, and a net increase in the number of dwellings and occupiers in the area would increase the pressure upon these important sites.
27. The Council has produced Supplementary Planning Documents (SPD) (ie the Dorset Heathlands Planning Framework SPD (2020) and the Poole Harbour Recreation SPD (2020)), detailing a strategy for the avoidance and mitigation of impacts of new residential development upon these important sites. These require that a contribution is made towards mitigating the impact of additional residents upon the site, including measures to control access, monitoring, and mitigation of the sites, and reflect the objectives of LP Policy PP32 which seeks amongst other things to only permit development that would not have an adverse effect

upon the integrity of nationally, European and internationally important habitat sites.

28. Given the location of the proposed dwellings, future occupiers would be likely to impact upon the sites having a significant effect upon their integrity. 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, and this duty falls to me as the competent authority.
29. The appellant has provided evidence of an online banking payment to the Council, along with a draft heads of terms form. The Council has confirmed it is in receipt of the payment but that it has not received a unilateral undertaking (UU). Although a payment has been made, without an associated UU there is no legal guarantee that the contribution would be used for its intended purpose. Measures to mitigate the impact of the proposal on the habitat sites need to be binding and secure. In the absence of a finalised legal agreement undertaking this, the impact of the development on the habitat sites cannot be assessed with any certainty.
30. Having regard to the absence of any mechanism to mitigate the harm to the heathlands and Poole Harbour, the proposal would adversely affect the integrity of these sites. This would be contrary to objectives of the Framework and to LP Policies PP32 and PP39. These policies require amongst other things, that development is only permitted where it would not lead to an adverse effect upon the integrity either alone or in combination with other schemes, directly or indirectly upon nationally and internationally important sites, thereby reflecting objectives of the Framework.

Other Matters

31. A distinct feature of the area is the presence of numerous tall trees, many of which are evergreens. There is an imposing Monterey Pine and a row of cypress growing within the grounds of No 22. In addition to these trees there is another group to the north. These trees create a verdant skyline and setting to the nearby homes, as well as providing a degree of enclosure. The trees are protected, reflecting the positive contribution they make to the area, albeit I note from the evidence before me that consent has been granted for felling the cypress. Having regard to the proximity of the protected trees to the site, the development would impact upon nearby trees, and this would include the installation of a car turntable. The application has not been supported with an arboricultural assessment and mitigation report to demonstrate that the health and vitality of these important trees would not be affected by the development. However, as I am dismissing the appeal for other reasons, I have not pursued this matter with the parties.

32. Local residents have raised a number of concerns, including land ownership, loss of privacy and light, and that the house would have an overbearing impact on the nearby single storey dwellings. Matters of land ownership would be for the relevant owners to address, and of those concerns connected with the planning considerations of the proposal before me, following my findings on the main issues, I have no need to consider them further.

Planning Balance

33. The Council acknowledges that it cannot demonstrate a five year supply of deliverable housing sites. Consequently, Paragraph 11 of the Framework is engaged, whereby planning permission should be granted unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.

34. The provision of two additional high-quality dwellings on a brownfield site would be a benefit arising from the scheme as it would contribute towards the supply of housing and be an efficient use of land. There would also be a small, time-limited economic benefit arising from the construction phase of building additional homes, and future occupiers would contribute to the local economy.

35. Weighing against these benefits would be the significant harms arising from the scheme. The proposal would deliver additional homes in an area at risk of future flooding thereby resulting in environmental and social harms. There would also be significant harm to the distinct character and appearance of the area. Furthermore, the absence of conclusive and effective mechanisms to protect the integrity of the habitat sites is another significant harm that weighs heavily against the proposal.

36. 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 policies referred to above are broadly consistent with those of the Framework. The significant adverse social and environmental impacts in this case amount to cumulative harms which carry substantial weight, and this thereby significantly and demonstrably outweighs the social and economic benefits, when assessed against the policies in the Framework as a whole.

Conclusion

37. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR